

**IN THE SUPREME COURT OF THE STATE OF OHIO**

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**WAYNE K. LIPPERMAN,** : **Case No. 2015-0121**  
: :  
**Appellant** : **Appeal from the Court of Appeals**  
: **for the Seventh Appellate District**  
**vs.** : :  
: :  
**NILE E. BATMAN, et al** : **Court of Appeals**  
: **Case No.: 14-BE-2**  
**Appellees.** :

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**APPELLANT'S MERIT BRIEF IN SUPPORT OF PROPOSITION OF LAW NUMBER 2  
AND PROPOSITION OF LAW NUMBER 3.**

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### STATEMENT OF FACTS

The Appellant, Wayne K. Lipperman, is the owner of approximately 41.23 acres in Pultney Township, Belmont County, Ohio. The Appellees, Nile E. Batman and Katheryn Batman, claim a 50% interest in the oil and gas underlying said property based upon a reservation by J. A. Clark in a deed to Joe Lagza dated November 10, 1925, of record in Volume 265, Page 168, for a conveyance of 31.3 acres; and in a deed dated May 25, 1926, to Lawrence Higgens filed at the Belmont County Records Office in Volume 278, Page 290, for a conveyance of 7.86 acres.

John A. Clark died testate on July 18, 1930, leaving as heirs Eva M. Clark and Maime Sulsberger. His Estate was probated in Belmont County Probate Court under Case No. 27870. There was no transfer of the mineral interest to his heirs through his estate. There was no Estate filed in Belmont County for Eva M. Clark or Maime Sulsberger.

There were no further transfers, conveyances, preservations, or any other actions of ownership over the subject mineral interest until Frances Batman, mother of Defendant Nile Batman filed an "Affidavit of Notice of Claim of Interest in Land" on September 14, 1981, at Volume 602, Page 38, Belmont County Deed Records, claiming ownership interest in over 100 properties in Belmont County including the mineral interest at issue in this case. That affidavit claims that she was the granddaughter of J. A. Clark, the owner of the original preserved interest.

Frances Batman died testate in Nebraska on October 15, 1981. A copy of her Will was filed in the Belmont County Recorder's Office on April 10, 1989 of record in Volume

654 Page 670, of the Belmont County Deed Records. There are no property descriptions attached to the will or any other documents referencing what property the appellant was claiming an interest in. An authenticated copy of her Will was filed on May 15, 1989, in the Belmont County Probate Court. However, no estate was administered in Belmont County by Ancillary Administration, thus there was no list of assets filed in the Probate Court to evidence what property the decedent claimed to own in Belmont County, and no certificates of transfer were issued with regard to any real estate in Belmont County.

The Lippermans, executed a lease to Reserve Energy Exploration Company dated April 7, 2006, of record in Volume 65 Page 802 of the Belmont County Deed Records. The Batmans, executed a lease, also to Reserve Energy Exploration Company dated November 13, 2008, in Volume 172, Page 685.

Reserve Energy assigned the leases to Equity Oil and Gas, by instrument dated January 26, 2007, of record in Volume 95 Page 459 of the Official Records. The Deep mining rights were further assigned to Phillips Exploration, Inc., by instrument dated May 15, 2008, of record in Volume 153 Page 418 of the Official Records. Phillips Exploration, Inc., (by XTO Energy, Inc., its agent and attorney-in-fact), filed a release of their interest in the one-half of the oil and gas rights leased under the Batman lease on August 27, 2014. Reserve Energy filed a release of its interest in the Batman lease by instrument dated September 22, 2014, of record in Volume 506 Page 46 of the Official Record.

The Procedural history of the case is also relevant to the issues before the Court. Plaintiffs filed the Complaint on February 15, 2012, as a quiet title action against Nile E. Batman and Katheryn Batman, naming the leasehold interests as necessary parties. Defendants filed Answers to the Complaint. On October 4, 2013, Plaintiffs filed a Motion

for Summary Judgment, and on October 5, 2013, the Defendants, Reserve Energy Exploration Company and the Equity Oil and Gas, filed a Motion for Summary Judgment. Reply briefs were filed and the matter was submitted to the judge for decision. The trial court entered a Decision on December 13, 2013, in favor of the Defendant, Reserve Energy, quieting title to the 50% interest in the minerals to Nile and Katheryn Batman.

This matter was filed in the Court of Appeals for the Seventh Appellate District of Belmont County on February 3, 2014. Briefs were filed by Reserve Energy Exploration Company, Equity Oil and Gas Funds, Inc., XTO Energy Inc., and P.C. Exploration Company, Inc., n.k.a. Phillips Exploration, Inc. No brief was filed by Bruce Smith, of Geiger, Temple, Smith & Hahn, LLP, attorney on behalf Nile and Katheryn Batman to support their position as owners of an interest in the mineral rights. Reply Briefs were filed and oral argument was held on October 29, 2014. At no time did the Appellees Phillips Exploration, Inc. and Reserve Energy, Inc., notify the Court that their leases had been released and any interest they had claimed in the in the subject property had terminated as of September 22, 2014.

The Court of Appeals rendered its Decision in favor of the Defendants on December 12, 2014. The Court of Appeals declined to rule on the issue of the will, as their decision was based on the “fixed lookback period” under the 1989 Ohio Dormant Mineral Act, finding the 1981 affidavit precluded automatic abandonment of the mineral interest.

**Proposition of Law No. 2: The act of recording an out-of-state Will is not a title transaction.**

The issue before this Court is whether the act of recording of an out of state will constitutes a title transaction that would serve as a savings event under the 1989 Ohio Dormant Minerals Act (ODMA) or the 2006 ODMA. There are several factors relevant to making this determination to wit: 1) Is the will in the form it was presented for recording a title transaction; 2) Whether an affidavit of Preservation filed prior to the enactment of the 1989 ODMA evidences ownership for purposes of subsequent filings; 3) Whether provisions of Ohio' Marketable Title Act should control; and 4) Whether the filing of an out of state will without a corresponding filing of an ancillary administration accomplishes a title transaction under Chapter 21 of the Ohio Revised Code.

A. What Constitutes a "Title Transaction".

ORC §5301. 47 is the starting point of analysis. §5301.47, defines a title transaction as follows:

(F) "Title transaction" means 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.

There is no question that title by will can be a title transaction if it affects title to any interest in land. The next logical question is what constitutes "title." By definition, "title" means "the union of all elements (as ownership, possession and custody) constituting the legal right to control and dispose of property." Black's Law Dictionary 1522 (2004, 8<sup>th</sup> Edition). A will can

bequeath "all title and interest in real property" but if the decedent had no title to real property at the time of death the filing of the will would have no effect.

"It is the provisions of the will that establish title, while the record thereof only make such title "effectual," and relates more particularly to the establishment of a proper chain of title in the state and county where the land is situated." This case further finds that "A title by devise is doubtless a new and independent title as distinguished from a title by descent, and is in abeyance until probate of the will, or record thereof in this state in the case of a foreign will, but probate once finally had, or record in case of a foreign will, establishes the next link in the chain of title from the devisor, and makes the title of the devisee effective from the death of such devisor." *Union Sav. Bank & Trust Co. v. Baltimore & Ohio Southwestern R.R.*, 7 Ohio N.P. (n.s) 497 (1908).

There are no provisions in the will of Frances Batman that bequeath or make reference to any to the mineral interest. The trial court found that will was a title transaction as a matter of law. "Wherefore, this Court finds that the Batman will, recorded on April 10, 1989, to be a title transaction and saving event pursuant to the 1989 ODMA and in accordance with the spirit of the law which essentially calls for one to 'use it or lose it'" (Trial Court Decision page 6).

The Court erroneously made no findings of fact relative to the chain of title of ownership of Frances Batman to any real estate or mineral interest in Belmont County that would have passed under her will. The record is clear that the last person with actual title to the severed mineral interest in this case was J.A. Clark by transactions which took place in 1925, and 1926. There was no action evidencing ownership of this interest until 1981. Furthermore, there is no mention of the mineral interest or any other property interest in her will. Under the definitions set forth in the Act, the will of Frances Batman is not a title transaction as there is no title effected by its filing. As equally as important is that there is no record chain of title to the severed mineral interest that is the subject of this litigation, which is addressed more fully below.

B. Does the 1981 Affidavit Constitute a Title Transaction?

The lower court made no ruling but assumed that Frances Batman was the owner of the mineral interest because of the filing of 1981 affidavit, and held that the will was a title transaction. Francis Batman died one month later, which was 76 years after the last title transaction. The affidavit was not a title transaction, merely a claim to ownership, and did not vest any interest in real estate in Frances Batman. Both the 1989 DOMA and 2006 DOMA make a distinction between a title transaction and a preservation.

This court in the case of *Dodd v Crosky 2015-Ohio-2362; 2015 Ohio LEXIS 1542, footnote 4* following ORC §5301.55 held:

“Presumably, the surface owner can challenge the accuracy of the mineral-interest holder's claim. But that is outside the operation of the Dormant Mineral Act, which addresses only whether a surface owner can employ the act's provisions to deem the mineral rights abandoned, reunite the mineral rights with the surface rights, and vest them in the surface owner.”

Appellees did not file a preservation affidavit in addition to the will of Francis Batman, and the will is not sufficient to transfer real estate in the form it was presented.

The purpose of the Marketable Title Act “is to simplify and facilitate land title transactions by allowing persons to rely on a record chain of title.” *Semachko v. Hopko (1973) 35 Ohio App.2<sup>nd</sup> 205, 209. 301 N.E. 2<sup>nd</sup> 560.* Furthermore, ORC §5301.55 reads “that Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

C. Does the Marketable Title Act Control?

The marketable title act deals directly with the issue of chain of title. § 5301.48. Unbroken chain of recorded title reads as follows:

“Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for forty years or more, has a marketable record title to such interest as defined in section 5301.47 of the Revised Code, subject to the matters stated in section 5301.49 of the Revised Code.

A person has such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in:

(A) The person claiming such interest; or

(B) Some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.”

Simply stated, the Batman defendants cannot established a chain of marketable title of ownership of the mineral interest to the Property. In order for the 1981 affidavit of Frances Batman to effectively preserve the interest so claimed therein, the mineral interest would have had to been part of an independent chain of title, which it was not. The Appellants, on the other hand, have a marketable chain of title, and should hold title free and clear of the claim to the mineral interest.

A marketable record of title is subject to an interest arising out of a "title transaction" under R.C. 5301.49(D), or the filing of a preservation notice under R.C. 5301.51, which may be part of an independent chain of title. *Heifner v. Bradford* (1983), 4 Ohio St. 3d 49, 4 OBR 140, 446 N.E. 2d 440.

The Marketable Title act further requires that notices filed under the Act contain certain information relating to the facts of the ownership of the real estate. ORC § 5301.52 states:

§ 5301.52. Contents and filing of notice

(A) To be effective and entitled to recording, the notice referred to in section 5301.51 of the Revised Code shall satisfy all of the following:

(1) Be in the form of an affidavit;

(2) State the nature of the claim to be preserved and the names and addresses of the persons for whose benefit the notice is being filed;

(3) Contain an accurate and full description of all land affected by the notice, which description shall be set forth in particular terms and not by general inclusions, except that if the claim is founded upon a recorded instrument, the description in the notice may be the same as that contained in such recorded instrument;

(4) State the name of each record owner of the land affected by the notice, at the time of its recording, together with the recording information of the instrument by which each record owner acquired title to the land;

(5) Be made by any person who has knowledge of the relevant facts or is competent to testify concerning them in court.

(B) The notice shall be filed for record in the office of the county recorder of the county or counties where the land described in it is situated. The county recorder of each county shall accept all such notices presented that describe land situated within the county, and shall enter and record them in the official records of that county, and shall index each notice in the direct index under the names of the claimants appearing in that notice and in the reverse index under the names of the record owners appearing in that notice. If the county recorder maintains indexes under section 317.20 of the Revised Code, the notices also shall be indexed under the description of the real estate involved. The county recorder shall charge the same fees for the recording of such notices as are charged for recording deeds.

(C) A notice prepared, executed, and recorded in conformity with the requirements of this section, or a certified copy of it, shall be accepted as evidence of the facts stated insofar as they affect title to the land affected by that notice.

The Batman defendants have produced no evidence of compliance with this statute that would show the will could even serve as a notice affidavit as it was recorded in the Belmont County Recorder's office.

While not specifically titled as an assignment, the will of Frances Batman could be construed as an assignment of her interest to her heirs. The language requiring a property description to be attached so that the county clerk may index is relevant to the issues herein.

§ 5301.46, Description of real property in assignment, release or cancellation of interest in separate instrument.

**(A)** As used in this section, "separate instrument" means an instrument other than the writing in which was created the interest in real property that is being assigned, released, or canceled.

**(B)** In any county that maintains sectional indexes pursuant to section 317.20 of the Revised Code, each assignment, release, or cancellation of an interest in real property that is made by a separate instrument shall contain a description of the real property that is subject to the interest sufficient to enable the county recorder to index the assignment, release, or cancellation correctly, and the description shall include all of the following:

**(1)** The permanent parcel number, if there is one, for the real property;

**(2)** The section, range, tract, subdivision, addition, lot, quarter, and municipal corporation, town, or township associated with the real property.

**(C)** If division (B) of this section requires a description of the subject real property to be contained in an assignment, release, or cancellation of an interest in real property that is made by a separate instrument, the omission in the assignment, release, or cancellation of any part of the description does not invalidate that instrument.

Clearly, the Batman will can be analyzed within the "separate instrument" definition. It is not an instrument of conveyance and it is recorded in the Belmont County Recorder's office.

While the statute is clear that an omission of *any part* of the description will not invalidate the instrument, it does not say that that all of the description can be omitted from the instrument.

D. Without an Ancillary Administration there is no effective "Title Transaction.

If the above statutes are not enough to show that the will in this case is not a title transaction, a review of ORC§ 2113.61(A)(1) (Application for Certificate of Transfer of Real Property), further supports that fact. In pertinent part, the statute reads otherwise:

(A) (1) When real property passes by the laws of intestate succession **or under a will** (*emphasis added*), the administrator or executor *shall* file in probate court, at any time after the filing of an inventory that includes the real property but prior to the filing of the administrator's or executor's final account, an application requesting the court to issue a certificate of transfer as to the real property. Real property sold by an executor or administrator or land registered under Chapters 5309, and 5310, of the Revised Code is excepted from the application requirement. Cases in which an order has been made under section 2113.03 of the Revised Code relieving an estate from administration and in which the order directing transfer of real property to the person entitled to it may be substituted for the certificate of transfer also are excepted from the application requirement. (Emphasis added).

Here, there is no indication that the Batmans can take refuge under any of the excepted provisions, and there is no question that the executor did not proceed with Probate and request the issuance of a certificate of transfer in the Probate proceeding.

The Code further deals directly with an out of state decedent in § 2129.19 Application for Certificate of Transfer:

“Prior to filing the ancillary administrator's final account, an ancillary administrator **shall** file in the probate court an application for a certificate of transfer as to the real property of the nonresident decedent situated in this state, in the same manner as in the administration of the estates of resident decedents under section 2113.61 of the Revised Code.

The Ohio Marketable Title Act, R.C. §5301.47 to §5301.56, specifically recognizes filings in the probate court as being recordings of records and recognizes title by will or descent as being a title transaction as set forth in §5301.47 (F). Thus, these statutes must be read together to determine what is necessary to facilitate a title transaction on an interest that passes by a will.

All statutes which relate to the same general subject matter must be read in *pari materia*. And, in reading such statutes in *pari materia*, and construing them together, the court must give such a reasonable construction as to give the proper force and effect to each and all such statutes.

The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Ohio Revised Code bearing upon the same subject matter should be construed harmoniously. The court in the interpretation of related and coexisting statutes must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict. *Maxfield v. Brooks* (1924), 110 Ohio St. 566, 144 N.E. 725.

**Proposition of Law No. 3: XTO Energy, Inc. and Phillips Exploration, Inc. have no standing to appear in this case.**

At no time during the litigation in this matter has the leasehold interests been subject to challenge. Reserve Energy and its successors would have a leasehold hold interest regardless of who is found to own the underlying mineral interest. As such, it was not proper for then to file motions for summary judgement, or oppose the summary judgement of the plaintiffs.

Civil Rule 56(B) provides, in pertinent part:

**“A party against whom a claim, counterclaim, or cross-claim is asserted (emphasis added) or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in **the party's** favor as to all or any part of the claim, counterclaim, cross-claim, or declaratory judgment action.”**

No claim was asserted against Reserve Energy or Equity Oil and Gas with regard to the ownership of the oil and gas underlying the property. The claim to quiet title was against the Batmans. It therefore stands to reason that Reserve Energy and Equity Oil and Gas had no standing to move the court for a determination of that issue under Civ. R. 56. The only issue that Reserve Energy and Equity Oil and Gas could properly move this court for summary judgment is the issue of the validity of the 2008 Batman Lease, which was not contested in the litigation.

A complete reading of Civ. Rule 56 is determinative that the moving party must show it is

the party that is entitled to judgment as a matter of law to be successful on summary judgment. In this case, the Batman defendants were the only defendants that could allege that they are the rightful owners of one half of the oil and gas underlying the property. The Batman Defendants have filed no motion or responded to the current motions now before the court. It is not disputed that neither Reserve Energy or Equity Oil and Gas have any claim to the mineral interest underlying the property.

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 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, 364 N.E.2<sup>nd</sup> 267 (1977).

As set forth above in *Temple v. Wean*, for summary judgment to be granted, all evidence must be construed most favorably to the non-moving party, and the conclusion is adverse to **that party** (emphasis added). Defendants Reserve and Equity filed against Appellants, to whom they had no adverse interest. Appellant filed a motion for summary judgment against the Batman Defendants who did not to oppose plaintiff’s motion. Therefore the motion should have been granted. However, Reserve Energy and Equity Oil and Gas, opposed the motion and moved to find the Batman interest valid.

Furthermore, the motion for summary judgment filed by the Defendants, Reserve Energy and Equity Oil and Gas, set forth no relief that could have been granted to them as the adverse party as required by the rule, therefore the motion was improper. Appellants raised this issue with the Trial Court by filing a motion to strike, which was denied.

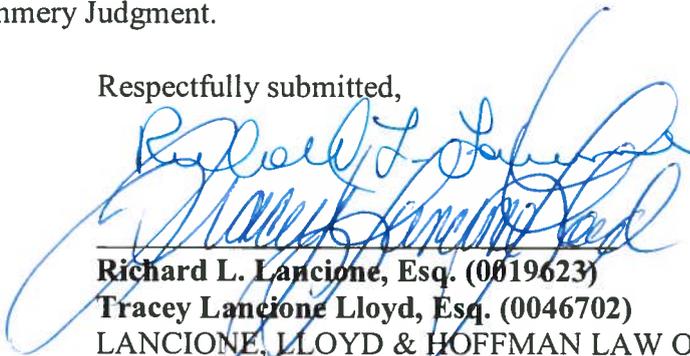
In addition, since the initiation of this litigation, both Reserve Energy and XTO released their leasehold interests in the subject real estate before the hearing before the Court of Appeals, and failed to disclose that fact to the Court or opposing counsel.

**CONCLUSION**

For the reasons set forth above, 1989 will of Frances Batman in the form it was recorded at the Belmont County Recorder's office did not constitute a title transaction under the Ohio Marketable Title Act, and thus not a saving event under either version of the Ohio Dormant Mineral Act. If it were to be determined that the Batman mineral interest was valid, the lease signed by the Batman defendants in 2008, is of no force and effect as it was signed more than twenty (20) years after the preservation was filed by Frances Batman in September of 1981.

As such, Appellants respectfully request that this Honorable Court reverse the Trial Court's granting of Summery Judgment.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **APPELLANT'S MERIT BRIEF ON PROPOSITION OF LAW NUMBER 2 AND 3**, was filed by electronic mail with the Court and also served by U.S. mail, this 8<sup>th</sup> day of September, 2015, upon the following:

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Appendix

**IN THE SUPREME COURT OF THE STATE OF OHIO**

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|                               |   |   |
|-------------------------------|---|---|
| <b>WAYNE K. LIPPERMAN,</b>    | : | <b>On Appeal from the Ohio Seventh District</b> |
|                               | : | <b>Court of Appeals and the Common Pleas</b>    |
| <b>Appellant,</b>             | : | <b>Court of Belmont County, Ohio</b>            |
|                               | : |   |
| <b>vs.</b>                    | : | <b>Seventh District Case No. 14 BE 0002</b>     |
|                               | : |   |
| <b>NILE E. BATMAN, et al.</b> | : |   |
|                               | : |   |
| <b>Appellees.</b>             | : |   |

---

**NOTICE OF APPEAL**

---

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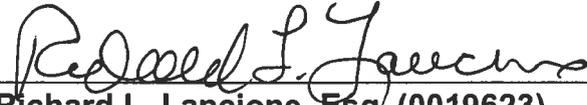
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(Counsel for Appellants XTO Energy Inc. and  
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### **NOTICE OF APPEAL OF APPELLANT WAYNE K. LIPPERMAN**

Now comes Appellant Wayne K. Lipperman, by and through counsel, and hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Belmont County Court of Appeals, Seventh Appellate District, entered in Court of Appeals Case No. 14 BE 0002 on December 12, 2014.

This case raises a question of public or great general interest.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing, **NOTICE OF APPEAL**, was served by US mail and electronic mail this **23<sup>rd</sup>** day of **January, 2015**, upon the following:

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\_\_\_\_\_  
**Richard L. Lancione (0019623)**  
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**FILED**  
COURT OF APPEALS

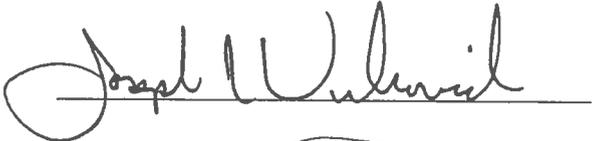
NO. 14 BE 2  
CYNTHIA K. MCGEE  
CLERK OF COURTS, BELMONT COUNTY  
DEC 12 2014

STATE OF OHIO            )  
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BELMONT COUNTY        )        SS:                   SEVENTH DISTRICT

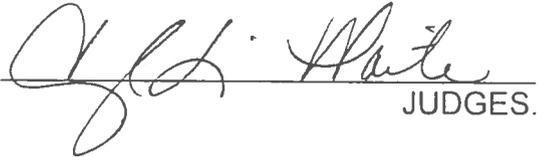
WAYNE LIPPERMAN, et al.,            )  
                                  )  
          PLAINTIFFS-APPELLANTS,    )  
                                  )  
VS.                                        )  
                                  )  
NILE BATMAN, et al.,                 )  
                                  )  
          DEFENDANTS-APPELLEES.    )

CASE NO. 14 BE 2  
JUDGMENT ENTRY

For the reasons stated in the Opinion rendered herein, the sole assignment of error is without merit and is overruled. It is the final judgment and order of this Court that the judgment of the Common Pleas Court, Belmont County, Ohio, is affirmed. Costs taxed against appellants.

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_ JUDGES.

FILED  
COURT OF APPEALS  
NO. 14 BE 2  
CYNTHIA K. MCGEE  
CLERK OF COURTS, BELMONT COUNTY  
DEC 12 2014

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

WAYNE LIPPERMAN, et al., )  
 )  
 PLAINTIFFS-APPELLANTS, )  
 )  
 VS. )  
 )  
 NILE BATMAN, et al., )  
 )  
 DEFENDANTS-APPELLEES. )

CASE NO. 14 BE 2  
OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Common Pleas Court,  
Case No. 12CV85.

JUDGMENT:

Affirmed.

JUDGES:

Hon. Joseph J. Vukovich  
Hon. Gene Donofrio  
Hon. Cheryl L. Waite

Dated: December 12, 2014

APPEARANCES:

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VUKOVICH, J.

{¶1} Plaintiffs-appellants Wayne Lipperman and Roseann Cook appeal the decision of the Belmont County Common Pleas Court granting summary judgment for defendants Nile Batman and Katheryn Batman, defendants-appellees Reserve Energy Exploration Co., Equity Oil & Gas Funds, Inc., XTO Energy Inc. and P.C. Exploration Inc. (nka Phillips Exploration, Inc.).

{¶2} This appeal concerns the 1989 version of the Ohio Dormant Mineral Act (DMA) and 41.23 acres of real estate in Pultney Township, Belmont County, Ohio. Appellants own the surface of said property. Batman claims to own 50% of the minerals (excluding coal) underlying said property. Appellants claim that Batman did not preserve that interest, and that the interest was abandoned and subject to divesture under the 1989 version of the DMA.

{¶3} The 1989 version of the DMA, former R.C. 5301.56(B)(1), provides that a mineral interest held by a person other than the surface owner of the land subject to the interest shall be deemed abandoned and vested in the owner of the surface unless (a) the mineral interest deals with coal, (b) the mineral interest is held by the government, or (c) a savings event occurred within the preceding twenty years. The six savings events are as follows: (i) the mineral interest has been the subject of a title transaction that has been filed or recorded in the recorder's office; (ii) there has been actual production or withdrawal by the holder; (iii) the holder used the mineral interest for underground gas storage; (iv) a mining permit has been issued to the holder; (v) a claim to preserve the mineral interest has been filed; or (vi) a separately listed tax parcel number has been created. R.C. 5301.56(B)(1)(c)(i)-(vi).

{¶4} The trial court decided that under the 1989 version of the Act, the 20 year period is a rolling period. It found that two savings events occurred that preserved Batman's interest in the minerals Nile Batman inherited from his mother, Frances Batman. The first was the 1981 affidavit from Frances Batman that was recorded in the Belmont County Recorder's Office specifically preserving her mineral interest in the subject tract of land. The second was the filing of Frances' will in the

Belmont County Probate Court and Recorder's Office in 1989, which was approximately eight years after she died.

{¶5} Appellants find fault with the trial court's second determination. They admit that the 1981 affidavit, that was filed one month before Frances died, was a savings event. However, they assert that her death in 1981 was the second savings event and that the recording of her will in 1989 relates back to the date of her death and thus, the recording of the will only preserves the interest until 2001 (20 years from the date of her death).

{¶6} For the reasons expressed below, the trial court's decision is affirmed, albeit for reasons other than those expressed in its judgment entry. We have recently determined that the look-back period in the 1989 version of the Act is a fixed period that extends from March 22, 1969 to March 22, 1989. The act further provides for a three year grace period to perfect a savings event, which meant that a savings event could occur as late as March 22, 1992. *Eisenbarth v. Reusser*, 7th Dist. No. 13MO10, 2014-Ohio-3792. Thus, based on our *Eisenbarth* decision, we are only concerned with what occurred from March 22, 1969 to March 22, 1992. The trial court's statement that it is a rolling period is incorrect. However, that does not affect the result in this instance. It is undisputed that the 1981 affidavit occurred within that period and is a savings event. Thus, Batman's interest in the minerals were preserved and the trial court correctly determined that there was no abandonment.

#### Statement of the Case

{¶7} The facts in this case are undisputed. Appellants own a tract of land in Belmont County, Ohio. Batman claims that he owns 50% of the mineral interest in that land, which he acquired through inheritance.

{¶8} Appellants signed a lease of the oil and gas rights in the property with Reserve Energy Exploration Company in April 2006. Batman also signed a lease with Reserve Energy Exploration for the oil and gas rights in November 2008. It appears that Reserve Energy Exploration has assigned its interest in both leases to Equity Oil & Gas Funds, Inc. Equity Oil & Gas Funds, Inc. then assigned part of its interests to XTO Energy Inc., and PC Exploration.

**{¶9}** On February 15, 2012, appellants filed a complaint for quiet title in Belmont County Common Pleas Court against Batman, Reserve Energy Exploration Co., Equity Oil & Gas Funds, Inc., PC Exploration Inc. and XTO Energy. They were seeking to have the 50% mineral interests merge with the surface because the interest had been abandoned and subject to divesture under the 1989 version of the DMA. This complaint only sought to invoke the 1989 version of the DMA, it did not seek to apply the 2006 version of the act. All defendants filed an answer claiming that there were savings events that preserved Batman's mineral interests. 03/15/12 Batman Answer; 03/19/12 Reserve Energy Exploration Co. Answer; 03/21/12 PC Exploration Inc. and XTO Energy Inc. Answer; 04/30/13 Equity Answer.

**{¶10}** On October 3, 2013, appellants moved for summary judgment. Appellants argued that even if Frances Batman's September 14, 1981 Affidavit and Notice of Claim of Interest in Land that was filed and recorded in Belmont County, Ohio was a savings event under the 1989 version of the DMA, there was no other savings event that occurred prior to 2008. Thus, according to them, in 2001, 20 years following the last savings event, the interest was abandoned and subject to automatic divesture under the 1989 version of the DMA. Appellants were asserting that the 20 year period in the 1989 version of the DMA is a rolling period.

**{¶11}** The following day, Reserve Energy Exploration and Equity Oil & Gas Funds, Inc. filed its motion for summary judgment. These parties made two separate arguments. First, it asserted that if the 20 year period is a fixed period, then the 1981 affidavit is a savings event and under the 1989 version of the Act, the minerals were not abandoned. Second, it argued that if a rolling period is employed, there was a savings event on April 10, 1989 when a certified copy of Frances' will was recorded in Belmont County, Ohio. It contended that a will is a title transaction that constitutes a savings event. There was also another savings event when Batman signed a lease with Reserve in 2008. Thus, it contended that under a rolling period there is no 20 year period where there has not been a savings event.

**{¶12}** Appellants filed a response in opposition to Reserve Energy Exploration and Equity Oil & Gas Funds, Inc.'s summary judgment motion. 10/17/13 Motion.

Appellants asserted that the recording of the will was not a title transaction because it was not properly probated in Belmont County, Ohio.

{¶13} Reserve Energy Exploration and Equity Oil & Gas Funds, Inc. filed a response in opposition to appellants' motion for summary judgment reiterating the same arguments espoused in its motion for summary judgment. 10/18/13 Motion. Reserve Energy Exploration and Equity Oil & Gas Funds, Inc. also filed a reply to appellants' motion in opposition to Reserve Energy Exploration and Equity Oil & Gas Funds, Inc.'s summary judgment motion. 10/24/13 Reply.

{¶14} On December 16, 2013, the trial court granted summary judgment for Reserve Energy Exploration and Equity Oil & Gas Funds, Inc.

{¶15} Appellants timely appeal from that decision. 01/13/14 Notice of Appeal.<sup>1</sup>

#### Assignment of Error

{¶16} "The trial court erred in granting summary judgment for the defendant Reserve Energy Corporation because the mere act of recording an out of state will is not a title [sic] transaction under ORC §5601.56. [sic]"

{¶17} We review a trial court's decision to grant summary judgment using 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 apply the same test the trial court uses, which is set forth in 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. Flemming*, 68 Ohio St.3d 509, 511, 628 N.E.2d 1377 (1994).

{¶18} In granting summary judgment for Reserve Energy Exploration and Equity Oil & Gas Funds, Inc. the trial court made multiple findings. First, it stated that Lipperman and Cook sought to have Batman's mineral interests deemed abandoned

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<sup>1</sup>It is noted that this case is closely related to another appeal presently before this court – *Albanese v. Batman*, 7th Dist. No. 14BE22.

and subject to divestiture under the 1989 version of the DMA. They did not seek to have the mineral interests deemed abandoned under the 2006 version of the act and they did not make an attempt to comply with the notice provisions in the 2006 version. Thus, the trial court indicated that it was only applying the 1989 version of the act. It also found that the 20 year look-back period in the 1989 version of the act is a rolling, not a fixed, look-back period. It then found that there were three savings events that preserved the mineral interest. First, is Frances' Affidavit that was filed with the Belmont County Recorder's Office on September 14, 1981. It found that the language contained in the affidavit complies with the requirements of R.C. 5301.52 and as such qualifies as a savings event under the 1989 version of the DMA. The second savings event was the filing of a certified copy of Frances' will in the Belmont County Recorder's Office on April 10, 1989 and the recordation of that will on April 11, 1989. The third savings event was the oil and gas lease between Batman and Reserve Energy Exploration in November 2008 that was recorded on December 3, 2008. Thus, given those savings events, the trial court determined that Batman had preserved his interest in the minerals and thus, granted summary judgment for Reserve Energy Exploration and Equity Oil & Gas Funds, Inc.

{¶19} The parties' arguments on appeal focus on the alleged savings events. The parties did not assign as error the trial court's determination that the 1989 version of the act has a rolling look-back period. However, based on our recent decision in *Eisenbarth*, we must address the trial court's determination that the look-back period is rolling.

{¶20} In *Eisenbarth*, this court was asked to decide whether the 20 year look-back period is a rolling or fixed period. *Eisenbarth v. Reusser*, 7th Dist. No. 13MO10, 2014-Ohio-3792. We concluded that "the statute is ambiguous as to whether the look-back period is anything but fixed. The use of the words 'preceding twenty years,' without stating the preceding twenty years of what, does not create a rolling look-back period." *Id.* at ¶ 48. In addressing the argument that the statute's language that provides for successive claims to preserve indicates that the statute has a rolling period, we explained:

The mention of successive claims to preserve and indefinite preservation in R.C. 5301.56(D)(1) could merely be a reference to any preservations that were filed under the OMTA as existed prior to the 1989 DMA in order to show that a new claim to preserve can still be filed if the old one was filed outside of the new twenty-year look-back. There is other statutory language connecting the twenty-year look-back period to the date of enactment as (B)(2)'s grace period provides three years *from the date of enactment* before items will be deemed abandoned. R.C. 5301.56(B)(2). As forfeitures are abhorred in the law, we refuse to extend the look-back period from fixed to rolling. See generally *State ex rel. Falke v. Montgomery Cty. Resid. Dev., Inc.*, 40 Ohio St.3d 71, 73, 531 N.E.2d 688 (1988) (the law abhors a forfeiture).

As to the Eisenbarths' query of why the legislature would enact a "dead letter law," the point of the 1989 DMA may have been to give three years to eliminate or refresh stale mineral claims in the original look-back period, and the legislature planned to enact a new version for the next twenty-year period if public policy reasons for abandonment still applied in the future. And, the legislature did then enact the 2006 DMA within twenty years of the former DMA, adding a new look-back, twenty years from the service of notice. (Or, the intent was a multiple future periods, but that intent was not properly expressed.)

*Id.* at ¶ 49-50.

{¶21} Therefore, based on our *Eisenbarth* decision the trial court's conclusion that the look-back period is rolling is incorrect; the look-back period is fixed. However, the trial court's incorrect conclusion does not result in an automatic reversal. Rather, our analysis must continue and we must determine whether there was a savings event during the fixed period.

{¶22} The 1989 version of the DMA became effective on March 22, 1989. Thus, the 20 year look-back period extends from March 22, 1969 to March 22, 1989.

However, the act further provides for a three year grace period to perfect a savings event, which meant that a savings event could occur as late as March 22, 1992.

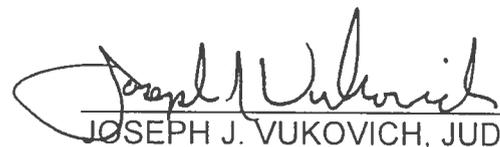
{¶23} Here, all parties admit that the 1981 Frances Batman affidavit is a savings event. This affidavit states that it is "intended to be recorded in the Deed Records in Belmont County, Ohio for the purposes of evidencing the descent of such mineral interests and evidencing the claim" of Frances Batman in the "interests as provided in Section 5301/47 et seq., Ohio Revised Code, the "Ohio Marketable title Act." Furthermore, the claim to preserve complies with R.C. 5301.52. See R.C. 5301.56(C) (claims to preserve must comply with R.C. 5301.52). Consequently, since the statute has a fixed look-back period and a preservation act occurred during that period, the minerals were not abandoned under the 1989 DMA.

{¶24} In reaching this conclusion, we do not need to determine whether the recordation of the will in 1989 (which occurred within the three year grace period for the 1989 version) was a savings event. It is irrelevant because the 1981 affidavit had already preserved the mineral interest for the look-back period in the 1989 act.

{¶25} Therefore, for those reasons, the trial court's grant of summary judgment for Reserve Energy Exploration and Equity Oil & Gas Funds, Inc. is hereby affirmed. The sole assignment of error is deemed meritless.

Donofrio, J., concurs.  
Waite, J., concurs.

APPROVED:

  
JOSEPH J. VUKOVICH, JUDGE

# Court of Appeals of Ohio

JUDGES  
GENE DONOFRIO  
JOSEPH J. VUKOVICH  
CHERYL L. WAITE  
MARY DEGENARO



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COURT ADMINISTRATOR  
ROBERT BUDINSKY, ESQ.

## Seventh Appellate District

December 11th, 2014

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FILED  
COURT OF APPEALS  
14 BE 2  
CYNTHIA K. MCGEE  
CLERK OF COURTS, BELMONT COUNTY  
DEC 12 2014

**RE: WAYNE LIPPERMAN, et al., PLAINTIFFS-APPELLANTS,  
VS. NILE BATMAN, et al., DEFENDANTS-APPELLEES.  
CASE NO. 14 BE 2**

TO THE CLERK:

By direction of the Court, you are hereby authorized to enter on the docket (not journal) of the Court of Appeals the decision of this court in the above-captioned case as evidenced by the following entry:

**“December 12, 2014. Judgment of the Common Pleas Court, Belmont County, Ohio is affirmed. Costs taxed against appellants. See Opinion and Judgment Entry.”**

You are hereby authorized to file and spread upon the journal of this court the enclosed journal entry in the above-captioned case.

Very truly yours,

Renee' A. Rockwood-Suri,  
Judicial Secretary

Enclosures

cc (w/encl.): Judge Linton Lewis, Jr.

IN THE COURT OF COMMON PLEAS  
BELMONT COUNTY OHIO

FILED  
COMM. PLEAS COURT  
BELMONT CO., OHIO

2013 DEC 16 PM 1 07

WAYNE K. LIPPERMAN, et al.

Plaintiffs

v.

NILE E. BATMAN, et al.

Defendants

CYNTHIA K. Mc GILL  
CLERK OF COURT  
CASE NO. 12-CV-0085  
JUDGMENT ENTRY

---

This matter having come on before this Court upon Plaintiff Wayne K. Lipperman, et al.'s Motion For Summary Judgment having been filed with this Court on October 3, 2013 and Defendants Reserve Energy Exploration Company and Equity Oil & Gas Funds, Inc's Motion For Summary Judgment filed with this Court on October 4, 2013. Thereafter, Responses and Replies were filed regarding the same. After having reviewed said filings this Court makes the following ruling.

**STATEMENT OF FACTS**

The Plaintiffs are the surface owners of approximately 41.23 acres in Pultney Township, Belmont County, Ohio. The Defendants Nile E. Batman and Kathryn Batman claim an interest in the mineral rights based upon a reservation of one-half (1/2) of all the oil and gas in a deed from a predecessor in title being John Clark, with said deed dated May 25, 1926 and recorded at Volume 602, Page 162 in the records of the Belmont

County Recorder. The Plaintiffs claim that the Defendants have abandoned their interest in the oil and gas based upon their failure to comply with the requirements of the Ohio Dormant Mineral Act. (ODMA). The Plaintiffs signed a lease with Defendant Reserve Energy on April 7, 2006. The Defendants signed a lease with Reserve Energy on November 1, 2008 for one-half (½) of the oil and gas underlying the parcel in question. The Plaintiffs have couched their argument within the 1989 version of the ODMA and have not complied with the notice requirements of the 2006 version of the Act. Therefore, this Court shall conduct its analysis of the issues herein in light of the 1989 version of the ODMA.

#### **STANDARD OF REVIEW**

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when “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.” Ohio Rule of Civil Procedure 56(c).

Pursuant to Temple v. Wean United Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d 267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

## **1989 OHIO DORMANT MINERAL ACT**

The 1989 version of the ODMA became effective March 22, 1989. It provided for a twenty (20) year look back provision regarding abandonment of mineral interests and a three year grace period through March 22, 1992 to come into compliance with the Act.

Ohio Rev. Code Section 5301.56 (B)(1), (B)(1)(c)(i), (v) provides in pertinent part:

(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:

(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;

\* \* \*

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

There are a number of other savings events that are not relevant to our discussions in the case at bar. The Plaintiffs claim that the Defendant Batmans have abandoned their mineral interest and that there have not been savings events upon which the Batmans can rely.

## **THE BATMAN AFFADAVIT**

In analyzing the twenty (20) year look back period from March 22, 1989, this Court must review the Batman Affidavit of Preservation recorded September 14, 1981.

The Batman Affidavit was filed within the twenty (20) year look back window of the ODMA. This Court finds that the language contained in the affidavit complies with the requirements of Ohio Rev. Code Section 5301.52. As such, it qualifies as a savings event pursuant to the 1989 ODMA. Should the 1989 ODMA relate only to the years 1969-1989 plus the three year grace period, the Batman Affidavit would be sufficient to preclude abandonment by the Defendant Batmans. Whether the 1989 ODMA is stagnant or rolling requires further analysis.

### **THE TWENTY YEAR WINDOW**

Ohio Rev. Code Section 5301.56 (D)(1) provides:

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.

A stagnant twenty (20) year look back period would have no need for a provision calling for indefinite preservation of mineral interest through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Dormant Mineral Act to provide for a “rolling look back period.” Having so found, the Batmans are required to identify an additional savings event after the recording of their Affidavit to Preserve Interest on September 14, 1981 and before September 14, 2001.

## THE BATMAN WILL

Frances Batman held a one-half (½) interest in the oil and gas in the parcel in question when she died in 1981. Her will was filed for record in County Court of Dakota County, Nebraska on October 21, 1981. Subsequently her will was filed for record with the Belmont County Probate Court on May 15, 1989. A certification from the Nebraska court was appended to the Batman Will prior to when it was filed with the Belmont County Probate Court. The will provided for the transfer of Frances Batman's interest in the parcel herein to her son, the Defendant Nile Batman. The Batman Will was recorded with the Belmont County Recorder on April 10, 1989, some nineteen (19) days after the 1989 ODMA went into effect. A Certificate of Transfer was not recorded in the office of the Belmont County Recorder.

It is the position of the Defendants that the Batman Will is a title transaction and acts as a savings event pursuant to the 1989 ODMA. Ohio Rev. Code 5301.47 (F) defines a title transaction as follows:

(F) "Title transaction" means 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.

The failure to file the Certificate of Transfer does not negate the title transaction established by the filing of the Batman will with the Belmont County Recorder. The definition of title transaction provides for "any transaction affecting title to any interest in land including by will or descent..." See ORC 5301.47 (F). A number of other methods of

transfer are listed "... tax deed, or by trustee's, assignee's, guardians, executor's, administrator's, or sheriff's deed..." Id. Certificates of Transfer are not listed in the definition of title transaction.

In Ohio Northern Univ. v. Ramga (July 12, 1990), 3<sup>rd</sup> Dist. App. No. 2-88-1, 1990 Ohio App LEXIS 2946 at \*9, the Court of Appeals held that "title to real estate generally passes by testate succession at the time of death[.]" In the dissenting opinion of Ramga, Judge Whiteside discussed the application of a certificate of transfer in regard to a transfer of real estate through the Probate Court.

The certificate of transfer is provided by R.C. 2113.61(A) and is issued by the probate court, not as a document transferring the real estate but as a certification that the real estate has been transferred either by devise under a will or by statutory intestate succession. R.C. 2113.62 provides that such certificate of transfer may be recorded by the county recorder. The issuance of such certificate of transfer, however, is not a prerequisite to the transfer of title to the property, nor to the marketability or alienability of title to such real property. R.C. 2113.61 commences with the words, "[w]hen real estate passes \* \* \* under a will\* \* \* [" clearly connoting that the transfer itself was effected by admission of the will to probate and that the certificate is merely a memorialization of such transfer which has previously occurred. Id at \* 11-12.

The Second District Court of Appeals stated the following regarding the application of certificates of transfer.

Upon proper application, a probate court must issue a certificate of transfer for record in the county in which real estate is situated, which must recite the names of devisees and the interest in the parcel of real estate inherited by each. R.C. 2113.61. Though the certificate of transfer is not a conveyance, it does constitute a memorialization by probate court of what occurred with respect to a real estate title upon the death of the decedent.

Platt v. Estate of Petrosky (July 24, 1992), 2d Dist. App. No. 91-CA-105, 1992 Ohio App. LEXIS 3953, at \*3.

In accordance with Ramga and Petrosky *supra*, the certificate of transfer is not the conveyance document but rather the will itself is the vehicle by which the inherited property is transferred. Wherefore, this Court finds the Batman Will, recorded on April 10, 1989, to be a title transaction and savings event pursuant to the 1989 ODMA and in accordance with the spirit of the law which essentially calls for one to “use it or lose it.”

### **THE BATMAN LEASE**

When applying the “rolling look back period,” in order for the Batmans to avoid abandonment of their mineral interests pursuant to the 1989 ODMA, they must be able to rely on a savings event prior to April 9, 2009. The Defendant Batmans entered into a lease with Defendant Reserve Energy. The same was recorded with the Belmont County Recorder on December 3, 2008. The Ohio Supreme Court has held that an oil and gas lease is “more than a mere license,” it conveys “a vested, though limited, estate in the lands for the purposes named in the lease.” Harris v. Ohio Oil Co. (1897), 57 Ohio St. 118, 130.

An oil and gas lease is a “title transaction” pursuant to Ohio Rev. Code 5301.47 (F). “The transaction must merely ‘affect’ the interest. Clearly, an oil and gas lease is an instrument which affects an interest in such minerals.” Bender v. Morgan Columbiana Co. C.P. Case No. 2012-CV-387, at 4.

The Batman oil and gas lease recorded on December 3, 2008 fulfills the requirements of the 1989 ODMA.

**EQUITY OIL AND GAS FUNDS, INC.**

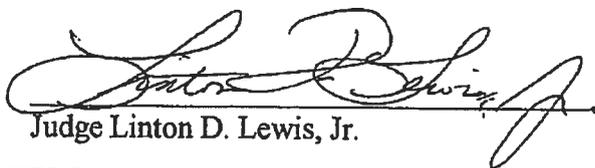
The Plaintiffs' Motion For Summary Judgment relates to the validity of the Batman lease. The Defendant Equity Oil & Gas Funds, Inc. has no interest in the Batman lease. Therefore, the Plaintiffs are foreclosed from obtaining judgment against Defendant Equity in relation to the same.

**CONCLUSION**

After having considered Plaintiff Wayne K. Lipperman et al.'s Motion For Summary Judgment and Defendants Reserve Energy Exploration Company and Equity Oil & Gas Funds, Inc's Motion For Summary Judgment and after construing the evidence most strongly in favor of the nonmoving parties and having determined that there is no genuine issue as to any material fact and that reasonable minds can come to but one conclusion and further that there is no just reason for delay, this Court makes the following ruling.

This Court finds that Reserve Energy Exploration Company and Equity Oil & Gas Funds, Inc. are entitled to judgment herein. This Court grants the Motion For Summary Judgment of Reserve Energy and Equity Oil and Gas. This Court denies the Motion For Summary Judgment of Plaintiffs Wayne K. Lipperman et al. Plaintiffs' Complaint is hereby dismissed with prejudice. Costs shall be assessed to the Plaintiffs herein. This is a

final appealable order. **IT IS SO ORDERED.**



Judge Linton D. Lewis, Jr.

**ENDED**

CLERK SERVED COPIES ON  
ALL THE PARTIES OR  
THEIR ATTORNEYS

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.