

IN THE SUPREME COURT OF OHIO

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

MERIT BRIEF OF DEFENDANTS/APPELLEES
PHILLIPS EXPLORATION, INC. AND XTO ENERGY INC.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF FACTS 3

 A. The Factual Record Actually Before The Trial Court. 3

 B. The Mineral Reservation..... 3

 C. The Recorded Batman Affidavit. 4

 D. The Lippermans’ Limited Argument Before The Trial Court. 7

 E. The Lippermans’ Assert A Different Argument Before The Seventh
 District..... 8

 F. The Lippermans Assert Different Arguments Before This Court. 9

ARGUMENT 10

 A. Standard Of Review. 10

 B. Response To The Lippermans’ Second Proposition Of Law (The Act Of
 Recording An Out-Of-State Will Is Not A Title Transaction): The Batman
 Will Was A “Title Transaction” And The 1989 Recording Thereof Was A
 Savings Event Under The 1989 ODMA. 11

 1. Overview Of The 1989 ODMA And Related Provisions. 12

 2. The Plain And Unambiguous Statutory Language Confirms That
 The 1989 Recording Of The Batman Will Was A Savings Event
 Under The 1989 ODMA. 14

 3. The Lippermans’ New Arguments Are Not Properly Considered..... 16

 C. Response To Lippermans’ Third Proposition Of Law (The XTO Parties
 Have No Standing To Appear In This Case): The XTO Parties—*Joined
 By The Lippermans* As Defendants In This Case—Do Not Lack
 “Standing.” 18

CONCLUSION 20

APPENDIX

 1989 ODMA Appx.-001

 R.C. 5103.47 Appx.-007

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<u>Baker v. Carr</u> , 369 U.S. 186 (1962)	18
<u>Bank of Am., N.A. v. Kuchta</u> , 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E. 1040	19
<u>Bank of Am., N.A. v. Stewart</u> , 7th Dist. Mahoning No. 13 MA 48, 2014-Ohio-723.....	19
<u>Clemens v. Nelson Fin. Grp., Inc.</u> , 10th Dist. Franklin No. 14AP-537, 2015 WL 1432604, 2015-Ohio-1232	10
<u>Corporate Exch. Bldgs. Iv & V, L.P. v. Franklin Cty. Bd. of Revision</u> , 82 Ohio St.3d 297, 695 N.E.2d 743 (1998).....	17
<u>Diamond v. Charles</u> , 476 U.S. 54 (1986).....	18
<u>Dodd v. Croskey</u> , 143 Ohio St.3d 293, 2015-Ohio-2362, 37 N.E.3d 147	1, 14
<u>Fed. Home Loan Mortgage Corp. v. Schwartzwald</u> , 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214	2, 19
<u>Gibson v. Meadow Gold Dairy</u> , 88 Ohio St.3d 201, 724 N.E.2d 787 (2000)	10
<u>Grafton v. Ohio Edison Co.</u> , 77 Ohio St.3d 102, 671 N.E. 2d 241 (1996).....	10
<u>Holland v. Gas Ents. Co.</u> , 4th Dist. Washington No. 14CA35, 2015-Ohio-2527	19
<u>Kruse v. Voyager Insurance Companies</u> , 72 Ohio St.3d 192, 648 N.E.2d 814 (1995)	11
<u>McLaughlin v. CNX Gas Co.</u> , 2013 WL 6579057 (N.D. Ohio, Dec. 13, 2013)	15
<u>Middy v. Wedding Party, Inc.</u> , 30 Ohio St.3d 35, 506 N.E. 212 (1987)	10
<u>Paulin v. Midland Mut. Life Ins. Co.</u> , 37 Ohio St.2d 109, 307 N.E. 908 (1974).....	10
<u>Platt v. Estate of Petrosky</u> , 2d Dist. Greene No. 91-CA-105, 1992 WL 172161 (July 24, 1979)	18
<u>Racing Guild of Ohio, Local 304, Ser. Employees Int’l Union, AFL-CIO, CLC v. Ohio State Racing Comm’n</u> , 28 Ohio St.3d 317, 503 N.E.2d 1025 (1986).....	2, 18
<u>Riddel v. Layman</u> , 5 th Dist. Licking No. 94-CA-114, 1995 WL 498812 (July 10, 1995).....	16
<u>State v. Awan</u> , 22 Ohio St.3d 120, 489 N.E.2d 277 (1986).....	11
<u>State v. Bidinost</u> , 71 Ohio St.3d 449, 644 N.E.2d 318 (1994).....	11
<u>State v. Ishmail</u> , 54 Ohio St.2d 402, 377 N.E.2d 500 (1978)	10, 17
<u>Symmes Twp. Bd. of Trustees v. Smyth</u> , 87 Ohio St.3d 549, 721 N.E.2d 1057 (2000)	14

<u>Tokles & Son, Inc. v. Midwestern Indemn. Co.</u> , 65 Ohio St.3d 621, 605 N.E.2d 936 (1992).....	10
--	----

Statutes

R.C. 2113.61(A)(1).....	7
R.C. 5301.10.....	19
R.C. 5301.47, Ohio Marketable Title Act.....	12
R.C. 5301.47(F)	14, 16
R.C. 5301.56, Ohio Dormant Mineral Act.....	<i>passim</i>
R.C. 5301.56(B)(1)(c)(i).....	15
R.C. 5301.56(B)(2)	15

Rules

Civ.R. 56(C).....	10
Civ.R. 56(E).....	10

INTRODUCTION

The basic question presented is, based on the record before the Trial Court, whether the 1989 recording of the will of Frances Batman (the “Batman Will”) that provided for the bequest/transfer of, *inter alia*, a previously-reserved mineral interest to appellee Nile Batman (“Batman”) qualified as a savings event under the 1989 version of the Ohio Dormant Mineral Act, R.C. 5301.56 (the “1989 ODMA”). The answer, compelled by the plain and unambiguous statutory language, is clearly *yes*. See Dodd v. Croskey, 143 Ohio St.3d 293, 2015-Ohio-2362, 37 N.E.3d 147, ¶ 24 (“When the statute’s meaning is clear and unambiguous, we apply the statute as written and refrain from adding or deleting words.”).

Simply put, under the applicable statutes, the Batman Will was a “title transaction” that was *recorded* during the pertinent look-back period under the 1989 ODMA. As a result, it qualified as a “savings” event that preserved Batman’s mineral interest in the underlying property at issue and defeats the claim of Plaintiffs/Appellants Wayne K. Lipperman and Roseann Cook (the “Lippermans”) to full ownership of the mineral interests associated with the subject real estate.

Faced with this conclusion, the Lippermans resort to asserting arguments: (1) unsupported by properly-authenticated, admissible evidence; (2) not raised before the Trial Court, and therefore, waived; and/or (3) that are inconsistent with their own admissions and/or positions taken at earlier stages of the case. Such ever-changing arguments afford the Lippermans with no basis for relief from the Trial Court’s summary judgment decision.

Equally unavailing is the Lippermans' conclusory attack on the "standing" of Defendants/Appellees Phillips Exploration, Inc. and XTO Energy Inc. (the "XTO Parties") to participate in this Appeal. Indeed, the doctrine of standing is inapposite, for multiple reasons.¹

First, it has no application to the XTO Parties because they were simply joined as necessary party *defendants*—they have not asserted any claims for affirmative relief in this case. As this Court has held, "[t]he essence of the doctrine of standing is whether *the party seeking relief* has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" Racing Guild of Ohio, Local 304, Serv. Employees Int'l Union, AFL-CIO, CLC v. Ohio State Racing Comm'n, 28 Ohio St.3d 317, 321, 503 N.E.2d 1025 (1986) (emphasis added) (citation omitted).

Second, and independently, the doctrine of standing is inapplicable because the "factual" predicate for the Lippermans' argument—a post-filing release by the XTO Parties of an oil and gas lease that is not part of the Trial Court's factual record—occurred *years after* the Lippermans filed their Complaint. This Court has repeatedly held that a party's standing is determined and established at the time an action *is filed*; and events subsequent to filing have no bearing on the pertinent analysis. See, e.g., Fed. Home Loan Mortgage Corp. v. Schwartzwald, 2012-Ohio-5017, ¶ 24, 134 Ohio St.3d 13, 18, 2012-Ohio-5017, 979 N.E. 2d 1214, ¶ 24 ("standing is to be determined as of the commencement of suit").

For these and the other reasons discussed below, there is simply no issue with respect to the XTO Parties' "standing." Rather, the Court may readily dispose of that issue and proceed to

¹ Given that the arguments asserted were not properly raised before the Trial Court, this matter should be dismissed as having been improvidently accepted.

affirm the Trial Court’s conclusion that the Batman Will was a title transaction and that the recording thereof was a savings event under the 1989 ODMA.

STATEMENT OF FACTS

A. The Factual Record Actually Before The Trial Court.

It is telling that, in their Statement of Facts, the Lippermans include no specific references to the actual record before the Trial Court. Indeed, as discussed further below, some of the “facts” cited by the Lippermans consist of nothing more than unsupported assertions of counsel that are not properly considered here.

Putting aside counsel’s irrelevant assertions, the evidence properly before the Trial Court—and the only evidence properly considered here—revealed the following:

B. The Mineral Reservation.

The parties’ dispute in this case focuses on mineral rights associated with approximately 41.23-acres in Pultney Township, Belmont County, Ohio (the “Property”). [See Affidavit of Wayne K. Lipperman, Exh. C to Lippermans’ October 3, 2013 Motion for Summary Judgment.] Based on a deed recorded at Vol. 678, Pg. 32 of the Official Belmont County Records, the Lippermans are the undisputed owners of the surface rights associated with the Property, as well as 50-percent of the mineral rights associated therewith. [Id.]

Defendants/Appellees Nile and Katheryn Batman (the “Batmans”) claim ownership of the other 50-percent interest in the mineral rights associated with the Property. Their claim is based on a series of reservations and transfers dating back to 1925, as reflected in a recorded affidavit that was also filed with the Trial Court. [See 1981 Affidavit of Frances Batman (the “Batman Affidavit”), Exh. A to October 2, 2013 Affidavit of Lee Mahan (“Mahan Aff’d”), attached as Exh. 1 to Reserve Energy Exploration Company’s and Equity Oil & Gas Funds,

Inc.'s (collectively, "Reserve") October 17, 2013 Memorandum in in Opposition to Lippermans' Motion for Summary Judgment.]

As stated in the Batman Affidavit, the root of the Batmans' claim can be traced back to recorded deeds dated 1925 and 1926, respectively. The first, a November 1925 warranty deed from J.A. Clark to Joe Lazja, conveyed a 31.3-acre parcel, but specifically reserved "one-half of all oil and gas in and under said real estate." [Id.] The second, a May 1926 warranty deed from J.A. Clark to Lawrence Higgins and Emma Higgins, conveyed additional land included as part of the Property, but specifically excepted and reserved "one-half of all oil and gas ... with sole power in Grantor to lease and operate." [Id.] Collectively, these reserved mineral interests are described as the "Mineral Reservation."

According to the Batman Affidavit, the Mineral Reservation subsequently passed through various generations via testate and intestate succession, culminating with Frances Batman's inheritance of the Mineral Reservation from her mother, Mamie Sulsberger. [Id.]

C. The Recorded Batman Affidavit.

Through the Batman Affidavit, recorded in 1981, Frances Batman made clear her intent to preserve the Mineral Reservation, which she asserts she inherited from her mother. [Id.] Such affidavit expressly stated that it was "intended to be recorded in the Deed Records of Belmont County, Ohio for the purposes of evidencing the descent of such mineral interests and of evidencing the claim of this Affiant in and to such interests as provided for in Sections 5301.47 et seq., Ohio Revised Code, the 'Ohio Marketable Title Act'." [Id.] The Batman Affidavit was recorded in the office of the Belmont County Recorder at Official Records Book 602, Page 38. [Id.]

Notably, in their briefing before the Seventh District Court of Appeals, the Lippermans "conceded" that the Batman Affidavit was a "valid preservation" under the 1989 ODMA.

[Lippermans’ March 12, 2014 Appellate Reply Brief, at 5 (emphasis added).] Moreover, the Lippermans told the Seventh District that they “do not dispute that Appellees [sic] *predecessor in title had preserved an interest in one half of the mineral rights underlying the subject property*” [Id. at 6 (emphasis added).]

3. The Recorded Batman Will.

In August of 1975, Frances Batman executed a Last Will and Testament (the “Batman Will”). [Exh. A to Affidavit of Sherry Fay, attached as Exhibit 2 to Reserve’s October 4, 2013, Motion for Summary Judgment (the “Reserve MSJ”).] Through the Batman Will, included as part of the Trial Court record, Ms. Batman bequeathed *all* of her interest in real property—which necessarily would have included the Mineral Reservation, as stated in the Batman Affidavit—to her son, Nile E. Batman. [Id.] In pertinent part, the Batman Will provided that: “In the event that my son, Nile E. Batman, survives me for a period of third (30) days, then *all* of the residue of my estate, whether *real* or personal, and wherever situated, I bequeath and devise to my son to be his absolutely.” [Id. (emphasis added).]

The Batman Will was recorded with the office of the Belmont County Recorder on about April 10, 1989, at Vol. 654, Page 670. [Id.] Further, an authenticated copy of the Batman Will, accompanied by a Certificate of Transcript from Dakota County, Nebraska, was admitted for record and filed with the Belmont County Probate Court on May 15, 1989. [Mahan Aff., Exh. B.]

4. The XTO Parties' Oil And Gas Leases With The Lippermans And The Batmans.

The XTO Parties' connection to the Property, and specifically the Mineral Reservation, is through a pair of oil and gas leases.² Specifically, in order to ensure they had a valid leasehold interest in the Property, the XTO Parties acquired interests in leases with both sets of parties who claimed an interest in the mineral rights associated therewith: the Lippermans and the Batmans.

The first such lease was executed between the Lippermans and Reserve Energy Exploration Co. ("Reserve") in April 2006. [Exh. A to Affidavit of William A. Haas ("Haas Aff'd"), attached as Exh. 3 to Reserve MSJ (the "Lipperman Lease").] The Lipperman Lease covers the Lippermans' entire interest in the Property. [Id.]

Through a partial assignment dated January 26, 2007, Reserve assigned its interest in, among others, the Lipperman Lease to Equity Oil & Gas Funds ("Equity"). [Exh. B Haas Aff'd.] Subsequently, on May 15, 2008, Equity executed a partial assignment of its interest in the Lipperman Lease to PC Exploration (n/k/a Phillips Exploration, Inc.). [Exh. C to Affidavit of Alane M. King, attached to Reserve Defendants' Motion for Summary Judgment.]

The second lease was executed between the Batmans and Reserve in November 2008. [Exh. B to Affidavit of Sherry Fay, attached as Exh. 2 to Reserve MSJ (the "Batman Lease").] The Batman Lease covers the Batman Defendants' claimed 50-percent interest through the Mineral Reservation. [Id.] On January 12, 2009, Reserve executed a partial assignment of its interest in, among others, the Batman Lease to PC Exploration. [Exh. D to Haas Aff'd.]

As the Lippermans note, in approximately August 2014—more than two years after the case was filed—the XTO Parties recorded a release of their interest in the Batman Lease.

² XTO Energy Inc. is the parent company of Phillips Resources, Inc., which is the parent company of Defendant Phillips Exploration, Inc. [See June 5, 2013 Pretrial statement of Defendants XTO Energy, Inc. and Phillips Exploration, Inc. at 2.]

However, no evidence of such release is found in the Trial Court record—nor could it be, given that the release was recorded nearly a year after the Trial Court issued its judgment entry. In any event, for the reasons discussed below, such release is irrelevant to the matters presented, including the issue of the XTO Parties’ standing.³

D. The Lippermans’ Limited Argument Before The Trial Court.

Through their Complaint filed on February 15, 2012, the Lippermans sued the Batmans, Reserve, Equity, and the XTO Parties. In doing so, they invoked the 1989 ODMA and sought both an order quieting title in the Mineral Reservation in their favor and “cancelling” the Batman Lease. [Complaint, at 2-3.]

As it relates to the Batman Will, the Lippermans’ advanced, at summary judgment, the argument that the supposed lack of a “certificate of transfer” under R.C. 2113.61(A)(1) meant that there was no “title transaction” associated with the Batman Will. [Lippermans’ October 16, 2013, Response to Reserve MSJ, at 4-5.] Specifically, the Lippermans argued that it is not a will, but the certificate of transfer, that constitutes an “instrument of conveyance,” and thus, a “title transaction” for purposes of the 1989 ODMA. [Id.]⁴

³ Other “facts” the Lippermans cited before the Trial Court and continue to assert here are unsupported by proper record evidence. For example, at page 4 of their Merit Brief, the Lippermans assert that “no estate [for Frances Batman] was administered in Belmont County by Ancillary Administration, thus there was no list of assets filed in the Probate Court ... and no certificates of transfer were issued with regard to any real estate in Belmont County.” Although the Trial Court, in its decision, noted that no certificate of transfer was recorded, this assertion by counsel is unsupported by any evidence—admissible or otherwise—presented to the Trial Court.

⁴ On December 11, 2013, just five days before the Trial Court issued its final decision, the Lippermans filed a motion to take judicial notice of the date of Frances Batman’s death, which was contained in a separate affidavit signed by Nile Batman and purportedly recorded in the records of Belmont County (no copy of the subject affidavit was attached to the Lippermans’ Motion). Of course, the date of Ms. Batman’s death was already part of the record via the documents authenticating the Batman Will. [See Reserve MSJ.]

The Trial Court rejected this argument. Citing Ohio authorities holding that a “certificate of transfer is not a conveyance,” the Trial Court granted Reserve’s motion for summary judgment and held that the Batman Will, itself, was the pertinent “vehicle” of transfer and that the recording thereof in April 1989 established a savings event under the 1989 ODMA. [Trial Court’s December 16, 2013, Judgment Entry, at 5-7.]

E. The Lippermans’ Assert A Different Argument Before The Seventh District.

The Lippermans subsequently abandoned their summary judgment argument in their appellants’ brief filed with the Seventh District Court of Appeals. Specifically, they no longer argued that a certificate of transfer was required, but rather, conceded that the “filing of a Certificate of Transfer is not necessary to transfer real estate” [See Appellants’ February 3, 2014 Opening Brief, at 13.] Instead, the Lippermans re-hashed the belated argument from their motion to take judicial notice; conceded that the Batman Will resulted in a “title transaction”; but asserted that the pertinent date of such transaction—for purposes of the 1989 ODMA—was the date of Ms. Batman’s death in 1981, not the date her will was recorded. [Id. at 10-11.]⁵

In any event, in the subject motion, the Lippermans belatedly and out-of-rule asserted the alternative argument, without any citation of relevant authorities, that Ms. Batman’s death served as the pertinent date for determining whether the Batman Will established a savings event under the ODMA. In short, the Lippermans sought to use this motion as a thinly-veiled and belated effort to supplement their prior summary judgment briefing. They did so in contravention of Belmont County Local Rule 6.2, which required them to file any memorandum in opposition to Reserve’s MSJ within 14 days of service thereof, and any reply in support of their own motion for summary judgment within seven days of service of Reserve’s memorandum in opposition thereto. Thus, the matter was not properly presented to the Trial Court and cannot properly be considered on appeal.

⁵ In light of its prior authority concluding that the 1989 ODMA provided for a fixed, as opposed to rolling, lookback period, the Seventh District did not address the status of the Batman Will. That is because the Batman Affidavit, which the Lippermans conceded to be a proper preservation under the ODMA, was undisputedly recorded during the pertinent lookback period. [See Seventh District’s December 12, 2014 Decision, at 2 (noting it was “undisputed” that Batman Affidavit was a “savings event”).] The issue of whether the ODMA provides for a rolling or static lookback period is addressed in the Lippermans’ first proposition of law. This

F. The Lippermans Assert Different Arguments Before This Court.

Now, before this Court, the Lippermans have changed their position again. First, in their jurisdictional memorandum, the Lippermans argued—as they did before the Seventh District—that Ms. Batman’s date of death served as the pertinent “title transaction” and controlling date for purposes of applying the 1989 ODMA. [Lippermans’ January 23, 2015 Jurisdictional Memorandum, at 8.] They also reiterated that “the filing of the Certificate of Transfer is not necessary to transfer real estate in Ohio” [Id. at 10.]

However, in their Merit Brief, the Lippermans abandoned their argument that the date of death is controlling for purposes of applying the 1989 ODMA to the Batman Will. Instead, they assert that the 1981 Batman Affidavit and Batman Will were not valid savings events under the 1989 ODMA because Frances Batman did not have marketable title in the Mineral Reservation under *other provisions* of Ohio’s Marketable Title Act. [See Lippermans’ Merit Brief, at 6-10.] That argument was not raised or asserted before the Trial Court.⁶

Further, and contrary to their prior concession that a certificate of transfer is not necessary to transfer real estate, the Lippermans again assert in their Merit Brief that there was no effective title transaction because, according to their counsel (without any supporting record evidence), there was no “ancillary administration” of Frances Batman’s estate and no issuance of a certificate of transfer. [Id. at 11.] As discussed below, these constantly-changing and often inconsistent arguments afford the Lippermans with no basis for relief from the Trial Court’s decision.

Court has stayed briefing on that proposition, however, because the issue is currently before it in another case.

⁶ The Lippermans alluded—at least in part—to this argument in their March 26, 2014, reply brief filed in the Seventh District. However, as discussed below, they were required to assert such argument *before the Trial Court* in order to avoid a waiver thereof on appeal.

ARGUMENT

A. Standard Of Review.

This Court reviews a trial court's decision granting summary judgment *de novo*. Grafton v. Ohio Edison Co., 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). But, this review is subject to three significant limitations in the instant case.

First, it is syllabus law that “[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.” State v. Ishmail, 54 Ohio St.2d 402, 402 at Syllabus ¶ 1, 377 N.E.2d 500, 500 (1978) Paulin v. Midland Mut. Life Ins. Co., 37 Ohio St.2d 109, 112, 307 N.E.2d 908, 910 (1974) (noting “rule that the Court of Appeals is bound by the record before it and may not consider facts extraneous thereto”). Rather, when “[t]he issue presented is whether the trial court properly granted summary judgment for appellants[,] ... [the Court's] task is ... to apply Civ.R. 56(C) to the evidence and allegations contained in the record.” Middy v. Wedding Party, Inc., 30 Ohio St.3d 35, 36, 506 N.E.2d 212, 215 (1987). In short, “[a]ppellate review is limited to the record as it existed at the time the trial court rendered judgment.” Clemens v. Nelson Fin. Grp., Inc., 10th Dist. Franklin No. 14AP-537, 2015 WL 1432604, 2015-Ohio-1232, ¶ 24.

Second, such review is further circumscribed by the rule that a court addressing a motion for summary judgment may properly consider only facts that are *admissible in evidence*. See, e.g., Civ.R. 56(E); Tokles & Son, Inc. v. Midwestern Indemn. Co., 65 Ohio St.3d 621, 631 n.4 605 N.E.2d 936, 944 (1992) (“Only facts which would be admissible in evidence can be ... relied upon by the trial court when ruling upon a motion for summary judgment.”).

Third, this Court has repeatedly recognized that a litigant's failure to raise an argument before the trial court results in a waiver of that issue on appeal. Gibson v. Meadow Gold Dairy, 88 Ohio St.3d 201, 204, 724 N.E.2d 787 (2000) (“Meadow Gold failed to raise ... arguments in

the trial court, so those arguments are waived and we thus do not address them.”). In other words, “failure to raise at the trial court level ... [an] issue ..., which issue is apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state’s orderly procedure, and therefore need not be heard for the first time on appeal.” State v. Awan, 22 Ohio St.3d 120, 120 at Syllabus, 489 N.E.2d 277 (1986). This rule of waiver flows from the “general rule ... that ‘an appellate court will not consider any error which counsel for a party complaining of the trial court’s judgment could have called but did not call to the trial court’s attention at a time when such error could have been avoided or corrected by the trial court.’” Id. at 122 (citation omitted).⁷

B. Response To The Lippermans’ Second Proposition Of Law (The Act Of Recording An Out-Of-State Will Is Not A Title Transaction): The Batman Will Was A “Title Transaction” And The 1989 Recording Thereof Was A Savings Event Under The 1989 ODMA.

Based on the actual evidentiary record and arguments asserted before the Trial Court, the Lippermans’ Second Proposition of Law presents two basic questions.⁸ The first is whether the Batman Will, in bequeathing bequeathed all of Frances Batman’s interest in real estate was a “title transaction” for purposes of the 1989 ODMA. If the first question is answered in the affirmative, the second question is whether the date of recording of the Batman Will is the controlling date for establishing a savings event under the statute.

⁷ See also State v. Bidinost, 71 Ohio St.3d 449, 452-53, 644 N.E.2d 318 (1994) (“[A]ppellant’s arguments in support of the proposition have been waived because he failed to raise the alleged errors at the trial court level.”); Kruse v. Voyager Insurance Companies, 72 Ohio St.3d 192, 195 n.1, 648 N.E.2d 814 (1995) (party waived argument on appeal “by not raising it in the trial court”).

⁸ Consistent with the above-described authorities, The XTO Parties are limiting their responses herein to the record before the Trial Court and arguments raised by the Lippermans in their Merit Brief. To the extent the Lippermans once again raise new arguments in their reply brief, the Court should not consider them.

Despite the Lippermans' efforts to muddy the issue, the answer to both of these questions is yes, based on the record before the Trial Court and the plain and unambiguous language of the applicable statutes. As a result, even if this Court determines that a rolling look-back period applies under the 1989 ODMA, the Trial Court's decision should be affirmed because the April 1989 recording of the Batman Will was a savings event that preserved the Batmans' interest in the Mineral Reservation under the statute.

1. Overview Of The 1989 ODMA And Related Provisions.

The 1989 ODMA was enacted on March 22, 1989, as part of Ohio's Marketable Title Act, R.C. 5301.47, et seq. On its face, the statute was designed to provide a mechanism for effectuating the vesting in surface owners of reserved mineral rights that had not been the subject of transactions and/or claims to preserve the same filed as part of the public record for more than 20 years. Specifically, the 1989 ODMA provided, in pertinent part, that:

(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;

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

recorder of the county in which the lands that are subject to the pooling or unitization are located;

* * *

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

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

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

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

- (a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;
- (b) Otherwise complies with section 5301.52 of the Revised Code;
- (c) States that the holder does not intend to abandon, but instead to preserve, his rights in the mineral interest.

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

* * *

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

[App-1, 1989 Ohio Rev. Code § 5301.56 (emphasis added).]

For purposes of the Marketable Title Act, including the ODMA, R.C. 5301.47(F) has, at all relevant times, defined “title transaction” as including transactions affecting title “by will”:

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.

[App-7 (emphasis added).]

2. The Plain And Unambiguous Statutory Language Confirms That The 1989 Recording Of The Batman Will Was A Savings Event Under The 1989 ODMA.

As with any statute, this Court’s task in analyzing and applying the ODMA is to determine the legislative intent. This inquiry begins and ends with the statutory language where such language is plain and unambiguous:

In determining what the statute requires, our paramount concern is to ascertain and give effect to the intention of the General Assembly. ... To determine the legislative intent, we look to the language of the statute and the purpose to be accomplished by the statute. ... When the statute’s meaning is clear and unambiguous, we apply the statute as written and refrain from adding or deleting words.

[Dodd, 2015-Ohio-2362, at ¶ 24 (applying 2006 amendments to ODMA).]

In other words, “[w]hen the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need for this court to apply the rules of statutory interpretation.”

Symmes Twp. Bd. of Trustees v. Smyth, 87 Ohio St.3d 549, 553, 721 N.E.2d 1057 (2000).

By its plain and unambiguous terms, the 1989 ODMA expressly provided that a party’s mineral interest would be preserved (i.e., “saved”), and thus, not vested in the surface owner,

where, *inter alia*, such interest was the subject of a “title transaction” that was filed or recorded either: (1) within the 20 years prior to March 22, 1989; or (2) during the three-year grace period provided between March 22, 1989 and March 22, 1992. Moreover, Section 5301.47(F) clearly contemplated that the passage of title by will constituted a “title transaction” under the broad definition contained therein. See, e.g., *McLaughlin v. CNX Gas Co.*, 2013 WL 6579057, *3 (N.D. Ohio, Dec. 13, 2013) (quoting Section 5301.47(F), and commenting that “[i]t is difficult for the Court to conceive of a broader definition than the one chosen by Ohio law.”).

Based on the record before the Trial Court, that is precisely the case here. *First*, the Batman Will—an authenticated copy of which was filed for record with the Belmont County Probate Court—was a “title transaction” because it bequeathed all of Ms. Batman’s interests in real estate, including the Mineral Reservation, to Nile Batman “by will or descent.”

Second, it is undisputed that the Batman Will was filed for record with the Belmont County Recorder’s Office in April of 1989—within the three-year grace period provided under 1989 R.C. 5301.56(B)(2). That is all that is required to establish a savings event under the plain and unambiguous statutory language.

Contrary to the Lippermans’ arguments asserted before the Seventh District and in their jurisdictional memorandum, the date of the title transaction, itself, is not determinative of the existence or timing of a savings event under the 1989 ODMA. Rather, as the statutory language makes clear, the property at issue [1] must be the subject of a title transaction [2] that has “been filed or recorded in the office” of the county recorder. 1989 R.C. 5301.56(B)(1)(c)(i). Given the requirement of recording, it necessarily follows that the date of recording is determinative for purposes of the 1989 ODMA.

This conclusion is supported by Riddel v. Layman, 5th Dist. Licking No. 94-CA-114, 1995 WL 498812 (July 10, 1995). There, the court applied the 1989 ODMA in recognizing that the date of recording was the operative date for purposes of determining the existence of a savings event. Specifically, the Riddel court recognized that a 1965 deed (executed well outside of the 1989 ODMA’s 20-year lookback period), qualified as savings event where it was recorded in the Licking County Recorder’s office in 1973—within the subject lookback period. Id. at *2-3. In so holding, the court specifically emphasized that the appellee “recorded the deed on June 12, 1973, well within the preceding twenty years from the date the statute was enacted.” Id. at *3 (emphasis added).

The same is true here. Because the record reflects that Batman Will was a title transaction under the plain and unambiguous language of R.C. 5301.47(F), and because it was recorded within the pertinent lookback period under the 1989 ODMA, the Batman Will qualified as a savings event.

3. The Lippermans’ New Arguments Are Not Properly Considered.

Faced with the plain and unambiguous statutory language, the Lippermans resort in their Merit Brief to asserting arguments that: (1) they failed to raise before the Trial Court; and/or (2) are unsupported by evidence in the record. First, they argue that the Batman Will was not a “title transaction” because Frances Batman had no “marketable title” to transfer, based on the purported application of other provisions found in Ohio’s “Marketable Title Act.” In this regard, the Lippermans go so far as to fault the Trial Court for “erroneously [making] 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 the will.” [Lippermans’ Merit Brief, at 7, 9-11.]

Putting aside the fact that the Lippermans told the Seventh District that they “do not dispute that Appellees [sic] predecessor in title had preserved an interest in one half of the mineral rights underlying the subject property” [Appellate Reply Brief, at 6], they did not assert such arguments before the Trial Court. As a result, they have waived such arguments on appeal.⁹

Second, citing a series of probate statutes, the Lippermans argue that the Batman Will was not a title transaction because, according to their counsel, no ancillary estate was opened and no certificate of transfer was issued by the Belmont County Probate Court. That argument suffers from multiple deficiencies, and is, again, inconsistent with the Lippermans’ own admissions before the Seventh District.

While Reserve presented evidence that an authenticated copy of the Batman Will was filed for record with the Belmont County Probate Court and the Belmont County Recorder’s Office, the Lippermans offered only the bald assertions of their counsel to the effect that no ancillary estate was opened and no certificate of transfer was issued. Inasmuch as the “statements of counsel are not evidence[.]” such unsupported assertions are entitled to no credit on appeal. See Corporate Exch. Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision, 82 Ohio St.3d 297, 299, 695 N.E.2d 743 (1998); Ishmail, 54 Ohio St.2d 402, at Syllabus ¶ 1 (appellate court is limited to considering record as it was before the trial court).

But, lest there be any confusion, the Lippermans’ apparent argument that a certificate of transfer, and not the will itself, is the pertinent “title transaction” under the ODMA was properly rejected by the Trial Court. Indeed, it has been specifically recognized that a “certificate of

⁹ As a corollary to this argument, the Lippermans also assert that the 1981 Batman Affidavit was not, itself, a “title transaction.” That is a red herring. The pertinent question as to that document—which is not at issue in this appeal—is whether the recording of the affidavit qualified as a savings event under the 1989 ODMA. The Seventh District noted in its decision, the answer to that question was *not disputed by the Lippermans*. [Seventh District Decision, at 2 (“Appellants ... admit that the 1981 affidavit ... was a savings event.”) (emphasis added).]

transfer *is not a conveyance*” Platt v. Estate of Petrosky, 2d Dist. Greene No. 91-CA-105, 1992 WL 172161, *1 (July 24, 1979) (emphasis added).

C. Response To Lippermans’ Third Proposition Of Law (The XTO Parties Have No Standing To Appear In This Case): The XTO Parties—Joined By The Lippermans As Defendants In This Case—Do Not Lack “Standing.”

Finally, the Lippermans assert in passing that the XTO Parties lack “standing” to participate in this Appeal because, nearly two years after this case was filed, they recorded a release of their interest in the Batman Lease. In short, the Lippermans argue that even though *they sued the XTO Parties*, and even though the XTO Parties’ only substantive involvement in the case has been to file appellate briefs in support of the Trial Court’s decision, they have been deprived of “standing” by a post-filing event that is not part of the record in this case. That is nonsense, and such assertion ignores, in several respects, the basic premise of the doctrine of standing.

The essence of the doctrine of standing is whether the party *seeking relief* has “alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.” Racing Guild of Ohio, Local 304, Serv. Employees Int’l Union, AFL-CIO, CLC v. Ohio State Racing Comm’n, 28 Ohio St.3d 317, 321, 503 N.E.2d 1025 (1986) (quoting Baker v. Carr, 369 U.S. 186 (1962) (emphasis added). Standing, thus, presents a threshold issue of whether a party seeking affirmative relief has sufficiently alleged an injury that the court is able to redress through adjudication of the rights of the parties brought before it. See Diamond v. Charles, 476 U.S. 54, 62 (1986) (standing requires “the party seeking judicial resolution of a dispute ‘show that he personally had suffered some actual or threatened injury as a result of the putatively illegal conduct’ of the other party”).

Because standing is a threshold question that relates to a party's ability to seek relief, it is necessarily determined "as of the commencement of suit" Fed. Home Loan Mortgage Corp. v. Schwartzwald, 134 Ohio St.3d 13, 2012-Ohio-5017, at ¶ 24. In short, "standing to invoke the jurisdiction of the court depends on the state of things at the time the complaint is filed *so that post-filing events concerning standing can be disregarded.*" Bank of Am., N.A. v. Stewart, 7th Dist. Mahoning No. 13 MA 48, 2014-Ohio-723, ¶ 34 (emphasis added); Bank of Am., N.A. v. Kuchta, 141 Ohio St.3d 75, 82, 2014-Ohio-4275, 21 N.E.2d 1040, ¶ 28 (noting that post-filing events do not impact court's standing analysis).

Consistent with these authorities, the Lippermans' "standing" argument is simply misplaced. *First*, no question of "standing" is even presented because the XTO Defendants have not filed for or sought affirmative relief in this case. Rather, they have merely participated, as *Defendants/Appellees*, in the appellate process.

Second, even if a standing analysis was otherwise warranted, there is no question that the XTO Parties had a sufficient interest in the matter at issue *at the time the Lippermans filed their complaint*. Indeed, inasmuch as the Lippermans specifically sought the "cancel[ation]" of the Batman Lease [Complaint at 3], in which the XTO Parties undisputedly had an interest at the time of filing, the XTO Parties were *necessary parties* to the case under R.C. 5301.10. That statute provides for the joinder, in an action to "cancel" or "in any way involving" an oil and gas lease," of all parties who appear of record to have an interest in the same. *Id.*¹⁰ Moreover,

¹⁰ See Holland v. Gas Ents. Co., 4th Dist. Washington No. 14CA35, 2015-Ohio-2527, ¶ 15 ("The language of R.C. 5301.10 is plain and unambiguous. Once the evidence indicates that a person or entity has an interest in an oil and gas lease, the plaintiff must join that person or entity as a defendant 'in order to finally adjudicate and determine all questions involving such lease ... in such action.'").

irrespective of their release of the Batman Lease, the XTO Parties still retain a direct interest in the mineral rights associated with the Property as a party to the continuing Lipperman Lease.

Thus, at bottom, the doctrine of standing is inapposite and not properly invoked in these circumstances. The Lippermans' third proposition of law lacks merit.

CONCLUSION

For all of these reasons and based on the record before the Trial Court, the Batman Will was a title transaction and the April 1989 recording thereof was a savings event under the 1989 ODMA. Even if a rolling lookback period is applied, the Trial Court's decision should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served, via regular

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Appendix

1988 Ohio Laws File 314

OHIO
1988 SESSION LAWS AND RESOLUTIONS
117th Ohio General Assembly

Additions are indicated by <<+ UPPERCASE +>>
Deletions by <<- Lowercase ->>
Changes in tabular material are not indicated.

File 314
Substitute Senate Bill Number 223
DORMANT MINERAL INTERESTS—GENERALLY

Eff. March 22, 1989.

AN ACT to amend sections 317.08, 317.18, 317.20, 317.201, and 5301.53, to enact new section 5301.56, and to repeal section 5301.56 of the Revised Code to provide a method for the termination of dormant mineral interests and the vesting of their title in surface owners, in the absence of certain occurrences within the preceding 20 years, including the filing by the holder of a mineral interest of a preserving claim.

Be it enacted by the General Assembly of the State of Ohio:

OH ST § 317.08

SECTION 1. That sections 317.08, 317.18, 317.20, 317.201, and 5301.53 be amended and new section 5301.56 of the Revised Code be enacted to read as follows:

Sec. 317.08. Except as provided in division (F) of this section, the county recorder shall keep five separate sets of records as follows:

(A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices<<-,->> as provided for in sections 5301.47 to 5301.56 of the Revised Code; all judgments or decrees in actions brought under section 5303.01 of the Revised Code; all declarations and bylaws as provided for in <<-sections 5311.01 to 5311.22->> <<+ CHAPTER 5311.+>> of the Revised Code; affidavits as provided for in section 5301.252 of the Revised Code; all certificates as provided for in section 5311.17 of the Revised Code; all articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code; all articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code; all agreements for the registration of lands as archaeological or historic landmarks under section 149.51 or 149.55 of the Revised Code; <<-and->> all conveyances of conservation easements under section 5301.68 of the Revised Code<<+; AND ALL INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(C)(II) OF SECTION 5301.56 OF THE REVISED CODE;+>>

(B) A record of mortgages, in which shall be recorded:

(1) All mortgages, including amendments, supplements, modifications, and extensions <<-thereof->> <<+OF MORTGAGES +>>, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

(2) All executory installment contracts for the sale of land executed after September 29, 1961, which by <<-the->> <<+THEIR +>> terms <<- thereof->> are not required to be fully performed by one or more of the parties <<-thereto->> <<+TO THEM +>> within one year of the date of the contracts;

(3) All options to purchase real estate, including supplements, modifications, and amendments <<-thereof->> <<+OF THE OPTIONS+>>, but no such instrument shall be recorded if it does not state a specific day and year of expiration of its validity.

(C) A record of powers of attorney;

(D) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision thereof, and of other divisions or surveys of lands, and any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county engineer and all drawings as provided for in sections 5311.01 to 5311.22 of CHAPTER 5311 of the Revised Code;

(E) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments OF LEASES AND MEMORANDA OF LEASES.

All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, federal tax liens, personal tax liens, mechanics' liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, and liens provided for in sections 1513.33, 1513.37, 5111.021, and 5311.18 of the Revised Code.

The recording of an option to purchase real estate, including any supplement, modification, and amendment OF THE OPTION, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the instrument.

(F) In lieu of keeping the five separate sets of records required in divisions (A) to (E) of this section and the records required in division (G) of this section, a county recorder may record all the instruments required to be recorded by this section in two separate sets of record books. One set shall be called the "official records" and shall contain the instruments listed in divisions (A), (B), (C), (E), and (G) of this section. The second set of records shall contain the instruments listed in division (D) of this section.

(G) Except as provided in division (F) of this section, the county recorder shall keep a separate set of records containing all corrupt activity lien notices filed with the recorder pursuant to section 2923.36 of the Revised Code.

OH ST § 317.18

Sec. 317.18. At the beginning of each day's business the county recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore PREVIOUSLY received for record by him. The volume and page where EACH such instrument is recorded may be omitted until it is actually recorded if the file number is entered in place of the volume or page, but such file number may be omitted from any index volume in use on April 21, 1896, if the form of the index volume is not adapted to entering the file number. The indexes shall show the kind of instrument, the range, township, and section or the survey number and number of acres, or the permanent parcel number provided for under section 319.28 of the Revised Code, or the lot and subplot number and the part thereof, all as the case requires, of each tract, parcel, or lot of land described in any such instrument of writing. The name of each grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their ITS equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their ITS equivalent.

As to notices of claims filed in accordance with sections 5301.51 and 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their ITS equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

(B) The official designation of the officer by whom such instrument of writing was made;

(C) The individual names of the officers by whom such instrument <<-of writing->> was made.

In all cases of instruments filed in accordance with <<-sections 5311.01 to 5311.22->> <<+CHAPTER 5311.+>> of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate letter, followed on the same line by the name of the condominium property, and the name of the condominium property shall be entered in the reverse index under the appropriate letter followed on the same line by the name of the owner of the property, or, if the instrument contains the names of more than one owner<<+,+>> there shall be entered the name of the first owner followed by “and others” or its equivalent.

Any general alphabetical index <<-commenced after June 7, 1911,->> shall be <<+COMMENCED+>> in conformity to this section, and whenever, in the opinion of the board of county commissioners, it becomes necessary to transcribe, on account of its worn out or incomplete condition, any volume of <<-such->> <<+AN+>> index <<-now->> in use, such volume shall be revised and transcribed to conform with this section; except that in counties having a sectional index in conformity with section 317.20 of the Revised Code, such transcript shall be only a copy of the original.

OH ST § 317.20

Sec. 317.20. When, in the opinion of the board of county commissioners sectional indexes are needed, and it so directs, in addition to the alphabetical indexes provided for in section 317.18 of the Revised Code, the board may provide for making, in books prepared for that purpose, sectional indexes to the records of all real estate in the county, beginning with some designated year and continuing through such period of years as it specified, by placing under the heads of the original surveyed sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots, on the left-hand page, or on the upper portion of such page of the index book, the following:

(A) The name of the grantor;

(B) Next to the right, the name of the grantee;

(C) The number and page of the record where the instrument is found recorded;

(D) The character of the instrument, to be followed by a pertinent description of the property conveyed by the deed, lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the same page, beginning at the bottom, in like manner, all the mortgages, liens, notices as provided for in sections 5301.51 <<-and->><<+,+>> 5301.52<<+, AND 5301.56+>> of the Revised Code, or other encumbrances affecting such real estate.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county, and no additional levy shall be made in consequence of such services. <<-In the event that->> <<+IF+>> the board decides to have such sectional index made<<+,+>> it shall advertise for three consecutive weeks in one newspaper of general circulation in the county for sealed proposals to do such work as provided in this section, <<-and->> shall let the work to the lowest and best bidder, and shall require him to give bond for the faithful performance of the contract, in such sum as the board fixes, and such work shall be done to the acceptance of the <<-bureau of supervision and inspection of public offices->> <<+ AUDITOR OF STATE+>> upon allowance by such board. The board may reject any and all bids for the work, provided that no more than five cents shall be paid for each entry of each tract or lot of land.

When brought up and completed, the county recorder shall keep up the indexes described in this section.

OH ST § 317.201

Sec. 317.201. The county recorder shall maintain a book to be known as the “Notice Index.” Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book<<+,+>> there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 <<-and->><<+,+>> 5301.52<<+, AND 5301.56+>> of the Revised Code. In designated columns<<+,+>> there shall be entered on the left-hand page:

(A) The name of each claimant;

(B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;

(D) The type of claim asserted<<-; and on->><<+,+>>

<<+ON+>> the opposite page on the corresponding line<<+,>> a pertinent description of the property affected as appears in such notice <<+ SHALL BE ENTERED.>>

OH ST § 5301.53

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code<<-,>> shall not be applied <<+TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:>>

(A) <<-To bar any->> <<+ANY+>> lessor or his successor as reversioner of his right to possession on the expiration of any lease<<+,>> or any lessee or his successor of his rights in and to any lease<<+, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;>>

(B) <<-To bar or extinguish any->> <<+ANY+>> easement or interest in the nature of an easement created or held for any railroad or public utility purpose;

(C) <<-To bar or extinguish any->> <<+ANY+>> easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

(D) <<-To bar or extinguish any->> <<+ANY+>> easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) <<-To bar or extinguish any->> <<+ANY+>> right, title, estate, or interest in coal, and any mining or other rights pertinent <<- thereto->> <<+TO+>> or exercisable in connection <<- therewith->> <<+WITH ANY RIGHT, TITLE, ESTATE, OR INTEREST IN COAL;>>

(F) <<-To bar or extinguish any->> <<+ANY+>> mortgage recorded in conformity with section 1701.66 of the Revised Code;

(G) <<-To bar or extinguish any->> <<+ANY+>> right, title, or interest of the United States, <<-or->> of <<-the state of Ohio->> <<+THIS STATE+>>, or <<+OF+>> any political subdivision, body politic, or agency <<-thereof->> <<+OF THE UNITED STATES OR THIS STATE.>>

OH ST § 5301.56

<<+SEC. 5301.56. (A) AS USED IN THIS SECTION:>>

<<+(1) "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 AND WHOSE CLAIM DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE TO THE INTEREST OF THE RECORD HOLDER.>>

<<+(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE HOLDER TO DRILL AN OIL OR GAS WELL OR TO MINE OTHER MINERALS.>>

<<+(B)(1) ANY MINERAL INTEREST HELD BY ANY PERSON, OTHER THAN THE OWNER OF THE SURFACE OF THE LANDS SUBJECT TO THE INTEREST, SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, IF NONE OF THE FOLLOWING APPLIES:>>

<<+(A) THE MINERAL INTEREST IS IN COAL, OR IN MINING OR OTHER RIGHTS PERTINENT TO OR EXERCISABLE IN CONNECTION WITH AN INTEREST IN COAL, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE REVISED CODE;>>

<<+(B) THE MINERAL INTEREST IS HELD BY THE UNITED STATES, THIS STATE, OR ANY POLITICAL SUBDIVISION, BODY POLITIC, OR AGENCY OF THE UNITED STATES OR THIS STATE, AS DESCRIBED IN DIVISION (G) OF SECTION 5301.53 OF THE REVISED CODE;>>

<<+(C) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE FOLLOWING HAS OCCURRED:>>

<<+(I) THE MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE TRANSACTION THAT HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED;>>

<<+(II) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A LEASE TO WHICH THE MINERAL INTEREST IS SUBJECT, OR, IN THE CASE OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED CODE, IN WHICH THE MINERAL INTEREST IS PARTICIPATING, PROVIDED THAT THE INSTRUMENT OR ORDER CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED;+>>

<<+(III) THE MINERAL INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS BY THE HOLDER;+>>

<<+(IV) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE HOLDER, PROVIDED THAT AN AFFIDAVIT THAT STATES THE NAME OF THE PERMIT HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THE PERMIT HAS BEEN FILED OR RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED;+>>

<<+(V) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED IN ACCORDANCE WITH DIVISION (C) OF THIS SECTION;+>>

<<+(VI) IN THE CASE OF A SEPARATED MINERAL INTEREST, A SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE MINERAL INTEREST IN THE COUNTY AUDITOR'S TAX LIST AND THE COUNTY TREASURER'S DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LANDS ARE LOCATED.+>>

(2) <<+A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION BECAUSE NONE OF THE CIRCUMSTANCES DESCRIBED IN THAT DIVISION APPLY, UNTIL THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION.+>>

<<+(C)(1) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION MAY BE FILED FOR RECORD BY ITS HOLDER. SUBJECT TO DIVISION (C)(3) OF THIS SECTION, THE CLAIM SHALL BE FILED AND RECORDED IN ACCORDANCE WITH SECTIONS 317.18 TO 317.201 AND 5301.52 OF THE REVISED CODE, AND SHALL CONSIST OF A NOTICE THAT DOES ALL OF THE FOLLOWING:+>>

<<+(A) STATES THE NATURE OF THE MINERAL INTEREST CLAIMED AND ANY RECORDING INFORMATION UPON WHICH THE CLAIM IS BASED;+>>

<<+(B) OTHERWISE COMPLIES WITH SECTION 5301.52 OF THE REVISED CODE;+>>

<<+(C) STATES THAT THE HOLDER DOES NOT INTEND TO ABANDON, BUT INSTEAD TO PRESERVE, HIS RIGHTS IN THE MINERAL INTEREST.+>>

(2) <<+A CLAIM THAT COMPLIES WITH DIVISION (C)(1) OF THIS SECTION OR, IF APPLICABLE, DIVISIONS (C) (1) AND (3) OF THIS SECTION PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL INTEREST IN THE SAME LANDS.+>>

(3) <<+ANY HOLDER OF AN INTEREST FOR USE IN UNDERGROUND GAS STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND THOSE OF ANY LESSOR OF THE INTEREST, BY A SINGLE CLAIM, THAT DEFINES THE BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. THE CLAIM IS PRIMA-FACIE EVIDENCE OF THE USE OF EACH SEPARATE INTEREST IN UNDERGROUND GAS STORAGE OPERATIONS.+>>

<<+(D)(1) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION BY THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES DESCRIBED IN DIVISION (B)(1)(C) OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, SUCCESSIVE FILINGS OF CLAIMS TO PRESERVE MINERAL INTERESTS UNDER DIVISION (C) OF THIS SECTION.+>>

(2) <<+THE FILING OF A CLAIM TO PRESERVE A MINERAL INTEREST UNDER DIVISION (C) OF THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE REVISED CODE.+>>

Section 2. That existing sections 317.08, 317.18, 317.20, 317.201, and 5301.53 and section 5301.56 of the Revised Code are hereby repealed.

Approved December 21, 1988.

OH LEGIS 314

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5301.47 Marketable title definitions.

As used in sections 5301.47 to 5301.56, inclusive, of the Revised Code:

(A) "Marketable record title" means a title of record, as indicated in section 5301.48 of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 5301.50 of the Revised Code.

(B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.

(C) "Recording," when applied to the official public records of the probate or other court, includes filing.

(D) "Person dealing with land" includes a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.

(E) "Root of title" means that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.

(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.

Effective Date: 09-29-1961