

IN THE SUPREME COURT OF OHIO

Vernon L. Tribett, et al.,	:	
	:	
Plaintiffs-Appellees,	:	Sup. Ct. Case No. 2014-1966
	:	
v.	:	On Appeal from the Belmont County
	:	Court of Appeals, Seventh Appellate
Barbara Shepherd, et al.,	:	District, Case No. 13 BE 22
	:	
Defendants-Appellants.	:	

**MOTION OF APPELLANTS FOR CLARIFICATION
REGARDING *SUA SPONTE* ORDER DATED FEBRUARY 10, 2016**

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MOTION

Pursuant to S.Ct.Prac.R. 4, Appellants Barbara Shepherd, Marion L. Shepherd, David Shepherd, Scott Whitacre, Susan L. Spencer, Steve Whitacre, Samuel J. Whitacre, Ralph E. Earliwine, James K. Earliwine, Rhonda K. (Earliwine) Donley Williams, Mary E. Taylor, Cathy Jo Yontz, Carol W. Talley, Karen Stubbs, Joseph B. Skelly, David Huisman (individually), David Huisman (as personal representative of Debbie K. Allen, deceased), Mark Phillips, Brian Phillips, Liana L. Phillips Yoder, Sallie S. Shepherd, John Mauersberger, George Mauersberger, Gwen C. Lewis, Wayne L. Shepherd, Brent M. Moser, Barrett D. Moser, and Kaye Anderson Hall hereby move the Court for an order clarifying this Court's recent entry (*see 02/10/2016 Case Announcements, 2016-Ohio-467*) as follows: (1) the earlier *sua sponte* stay of the briefing schedule (*see 04-29-15 Case Announcements, 2015-Ohio-1591*) is lifted only as to Propositions of Law Nos. III and VII; (2) the briefing schedule shall proceed only on those two propositions of law; and (3) all remaining propositions of law remain subject to the stay pending a decision in *Walker v. Shondrick-Nau*, Sup. Ct. Ohio No. 2014-0803. A memorandum in support of this motion is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. BACKGROUND

There are more than a dozen cases pending before this Court involving the interpretation of Ohio Revised Code 5301.56, the Ohio Dormant Minerals Act (“DMA”). Six DMA-related cases have been fully briefed and argued:

- (i) *Dodd v. Croskey*, Sup. Ct. Ohio No. 2013-1730;
- (ii) *Chesapeake Exploration, L.L.C. v. Buell*, Sup. Ct. Ohio No. 2014-0067;
- (iii) *Walker v. Shondrick-Nau*, Sup. Ct. Ohio No. 2014-0803;
- (iv) *Corban v. Chesapeake Exploration, L.L.C.*, Sup. Ct. Ohio No. 2014-0804;
- (v) *Eisenbarth v. Reusser*, Sup. Ct. Ohio No. 2014-1767; and
- (vi) *Albanese v. Batman*, Sup. Ct. Ohio Nos. 2015-0120.

Of these, two have been decided: *Dodd v. Croskey*, Slip Opinion No. 2015-Ohio-2362 (June 18, 2015), and *Chesapeake Exploration, LLC v. Buell*, Slip Opinion No. 2015-Ohio-4551 (Nov. 5, 2015). At least nine other DMA cases remain pending before this Court, but are subject to a stay pending the outcome of *Walker*, Sup. Ct. Ohio No. 2014-0803, *Eisenbarth*, Sup. Ct. Ohio No. 2014-1767, or *Corban*, Sup. Ct. Ohio No. 2014-0804. Until February 10, 2016, this case was one of those stayed by the Court.

II. ARGUMENT

A. Briefing Was Stayed Pending Walker, Then the Stay Was Lifted.

In its Entry dated April 25, 2015, the Court accepted jurisdiction over a total of seven propositions of law in this case, but immediately stayed the briefing schedule *sua sponte*, pending a decision in *Walker*, Sup. Ct. Ohio No. 2014-0803. On February 10, 2016, in another *sua sponte* Entry, the Court stated: “this cause is no longer held for decision in case No. 2014-0803 [*Walker*] . . . and the stay of the briefing schedule in this case is lifted.” *02/10/2016 Case Announcements*, 2016-Ohio-467. No decision has been issued in *Walker*, Sup. Ct. Ohio No. 2014-0803. And, no motions have been filed in this case since the original stay went into place last April.

B. Briefing Should Proceed on Only Two Propositions of Law—The Other Five are Identical to those Briefed in Walker, and Should Remain Stayed.

For the Court’s convenience, and in the interests of judicial economy, Appellants note that only two of the seven propositions of law in this case are not already before this Court in one of the above-referenced DMA cases—specifically, Proposition of Law No. III (“Interpreting the 1989 version of the DMA as ‘self-executing’ violates the Ohio Constitution”) and Proposition of Law No. No. VII (“A claim brought under the 1989 version of the DMA must have been filed within 21 years of March 22, 1989 (or, at the very latest, March 22, 1992), or such claim is barred by the statute of limitations in R.C. 2305.04”). Each of the remaining five propositions of law is already before this Court in one or more DMA cases. In fact, Propositions of Law Nos. I, II, IV, V and VI in this case are identical to the propositions of law before the Court in *Walker*, Sup. Ct. Ohio No. 2014-0803, where they have been fully briefed and argued.

III. CONCLUSION

For these reasons, Appellants respectfully request that the Court issue an order to clarify that: (1) the *sua sponte* stay of the briefing schedule (*see 04-29-15 Case Announcements*, 2015-Ohio-1591) is lifted as to Propositions of Law Nos. III and VII only; (2) the briefing schedule shall proceed only on those two propositions of law; and (3) all remaining propositions of law remain subject to the stay pending a decision in *Walker*, Sup. Ct. Ohio No. 2014-0803.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Motion was sent by U.S. mail, postage prepaid, to the following
on this 12th day of February, 2016:

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