

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.	:	

**MEMORANDUM IN OPPOSITION TO APPELLEES' MOTION TO STRIKE
THE MOTION OF APPELLANTS FOR CLARIFICATION**

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MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE

On February 12, 2016, Appellants filed a Motion for Clarification with this Court for an order clarifying its *sua sponte* Entry dated February 10, 2016, which 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. Contrary to the statements in Appellee’s Motion to Strike, a service copy was sent by regular U.S. Mail to Appellees’ counsel. Further, on February 11, 2016, the day before the Motion for Clarification was filed, Appellants’ counsel spoke to Appellees’ counsel by phone and emailed the draft motion to Appellees’ counsel seeking consent to the motion. The next morning, before filing it, Appellants’ counsel spoke with Appellees’ counsel’s office by phone regarding the Motion for Clarification, at which point Appellants’ counsel was informed that Appellees would not consent to the motion. The fact that it was filed could not have been a surprise. For these reasons alone, this Court should deny the Motion to Strike.

In addition, Appellants emphasize that they would not have opposed the late filing of Appellees’ memorandum in opposition to the Motion for Clarification had opposing counsel asked rather than simply filing the Motion to Strike. In fact, Appellants would urge this Court to, at the same time it denies the Motion to Strike, accept the Appellees’ late-filed memorandum in opposition. The reason is simple—the memorandum in opposition supports exactly what the Appellants have asked, namely, to: (1) lift the stay of the briefing schedule only as to Propositions of Law Nos. III and VII (which present new issues not currently before this Court); and (2) stay all remaining propositions of law pending a decision in *Walker v. Shondrick-Nau*, Sup. Ct. Ohio No. 2014-0803.

Specifically, the Appellees claim that: (1) “while the issues [in this case] may be similar [to those in *Walker*] they are not identical in all respects and should be considered separately”;

and, (2) they “did not file Amicus Cauri [*sic*] briefs in the *Walker* case nor the other Dormant Minerals Act cases currently pending before this Court in reliance upon its opportunity to brief and argue these propositions of law before the Court in its own case.”

First, the Appellees are incorrect about the similarities between Propositions of Law Nos. I, II, IV, V and VI in this case and the five propositions of law before the Court in *Walker*, Sup. Ct. Ohio No. 2014-0803. Counsel for Appellants drafted the propositions of law in both cases, and except for a few grammatical changes, the propositions of law are identical. The chart below demonstrates just that (with the only changes being shown in underline/strikethrough):

<i>Walker v. Shondrick-Nau</i>	<i>Tribett v. Shepherd</i>
Proposition of Law No. I: The 2006 version of the DMA is the only version of the DMA to be applied after June 30, 2006, the effective date of said statute.	Proposition of Law No. I: The 2006 version of the DMA is the only version of the DMA to be applied after June 30, 2006, <u>(the effective date of said statute)</u> because the <u>1989 version of the DMA was not self-executing.</u>
Proposition of Law No. II: To establish a mineral interest as “deemed abandoned” under the 1989 version of the DMA, the surface owner must have taken some action to establish abandonment prior to June 30, 2006. In all cases where a surface owner failed to take such action, only the 2006 version of the DMA can be used to obtain relief.	Proposition of Law No. II: To establish a mineral interest as “deemed abandoned” under the 1989 version of the DMA, the surface owner must have taken some action to establish abandonment prior to June 30, 2006. In all cases where a surface owner failed to take such action, only the 2006 version of the DMA can be used to obtain relief.
Proposition of Law No. III: To the extent the 1989 version of the DMA remains applicable, the 20-year look-back period shall be calculated starting on the date a complaint is filed which first raises a claim under the 1989 version of the DMA.	Proposition of Law No. VI: To the extent the 1989 version of the DMA remains applicable <u>If a Court applies the 1989 version of the DMA in a lawsuit filed after June 30, 2006,</u> the 20-year look-back period shall be calculated starting on the date a complaint is filed which first raises a claim under the 1989 version of the DMA.
Proposition of Law No. IV: For purposes of R.C. 5301.56(B)(3), a severed oil and gas mineral interest is the “subject of” any title transaction which specifically identifies the recorded document creating that interest by volume and page number, regardless of whether the severed mineral interest is actually transferred or reserved.	Proposition of Law No. IV: For purposes of R.C. 5301.56(B)(3), A severed oil and gas mineral interest is the “subject of” any title transaction which specifically identifies the recorded document creating that interest by volume and page number, regardless of whether the severed mineral interest is actually transferred or reserved.

Proposition of Law No. V: Irrespective of the savings events in R.C. 5301.56(B)(3), the limitations in R.C. 5301.49 can separately bar a claim under the DMA.

Proposition of Law No. V: Irrespective of the savings events in R.C. 5301.53(B)(3), the limitations in R.C. 5301.49 can separately independently bar a claim under the DMA.

Second, the Appellees' decision not to file an amicus brief in the other DMA cases pending before this Court is irrelevant to the Motion for Clarification. The Appellees clearly had the opportunity to file such an amicus brief (which numerous other surface owners did), especially in light of the fact that the entirety of this case was stayed by this Court on April 25, 2016. But they did not. Thus, whether Appellees filed an amicus brief in the other DMA cases should have no bearing on this Court's decision regarding the pending Motion for Clarification.

For the reasons set forth above, Appellants respectfully request that the Court deny the Appellees' motion to strike (filed Mar. 7, 2016), accept Appellees' late-filed memorandum in opposition (filed Mar. 2, 2016), grant Appellants' Motion for Clarification (filed Feb. 12, 2016), and issue an order to clarify that: (1) the *sua sponte* stay of the briefing schedule (*04-29-15 Case Announcements*, 2015-Ohio-1591) is lifted only as to Propositions of Law Nos. III and VII; and (2) 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 e-mail and U.S. mail, postage prepaid, to the following on this 9th day of March, 2016:

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