IN THE SUPREME COURT OF THE STATE OF OHIO

Vernon L. **TRIBETT**, et al., *Plaintiffs - Appellees*	I I I	On Appeal from the Seventh District Court of Appeals and the Common Pleas Court of Belmont County, Ohio
VS	I I	Ohio Supreme Ct. Case No. 2014-1966
Barbara **SHEPHERD**, et al., *Defendants - Appellants*	I I	Seventh District Case No. 13 BE 22

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STATEMENT OF THE CASE AND FACTS

Appellees Vernon L. Tribett and Susan M. Tribett (hereinafter, "Appellees") took title to approximately 61.573 acres in Belmont County, Ohio, (hereinafter, "61-Acre Property") by General Warranty Deeds dated February 26, 1996, and March 7, 2006 of record in Volume 716, Page 446 and Volume 47, Page 258 of the Records of Deeds of Belmont County, Ohio, and of the Official Records of Belmont County, Ohio, respectively. The parties have stipulated the oil and gas ownership is only contested in 56.753 acres to which there was an oil and gas reservation in 1962. *Tribett v. Shepherd*, 7th Dist. Belmont No. 13 BE 22, 2014-Ohio-4320 ¶ 3.

In Appellees chain of title appears a General Warranty Deed conveying approximately 137.02 acres of which the contested 56.753 acres is a part, dated October 11, 1962 of Record in Volume 463, Page 492 of the Records of Deeds of Belmont County, Ohio. *Id.* In this deed the grantors Joseph H. Shepherd, John J. Shepherd and Keith Shepherd excepted and reserved unto themselves all the oil and gas underlying said premises with certain rights to drill and remove such oil and gas from the premises. *Id.*

Appellees claim they own all the oil and gas underlying the 61-Acre Property pursuant to the 1989 version of the Ohio Dormant Mineral Act[1] (hereinafter referred to as, "1989 DMA") since in the preceding twenty-years from March 22, 1992, none of the enumerated savings events listed in the 1989 DMA took place. *Id.* at ¶8.

Appellants[2] contend that the oil and gas reservation reference in the muniments of the 1986 Shell Mining Deed and 1992 R&F Coal Deed make these deeds saving events under the 1989 DMA by considering them title transactions of which the mineral interest reservation is the

[1] R.C. 5301.56 (effective March 22, 1989)

[2] Collectively referred to as, "Appellants," are all of the "Shepherds" in the Merit Brief of Appellants.

subject thereof. *Id.* at ¶9. However, when considering the plain language of the 1989 DMA, this interpretation and contention of law is meritless. *Id.* at ¶¶ 19-27.

In 2011, Appellees attempted to lease their mineral interest. The oil and gas industry recognized the 1989 DMA, but requested that Appellees proceed with the abandonment process of the 2006 version of the Dormant Mineral Act[3] (hereinafter referred to as, "2006 DMA"). So, out of an over-abundance of care, and pursuant to industry request, Appellees proceeded to conduct an abandonment proceeding in accordance with the requirements of the 2006 DMA.

Service by certified mail, pursuant to R.C. 5301.56 (E)(1), of Appellees' intent to declare the mineral interest abandoned upon each holder, in this case being the record owners Joseph H. Shepherd, John J. Shepherd and Keith Shepherd, was impossible.

Appellees had personal knowledge that these record holders were deceased. Joseph H. Shepherd, John J. Shepherd and Keith Shepherd never conveyed nor transferred their oil and gas interest while living, nor was their interest included in the inventory of any of their probate estates, nor ever transferred of record by Certificate of Transfer. There were no Certificates of Will filed for any holder and no public record in Belmont County indicating who the record owner was.

Realizing that notice by certified mail could not be completed upon Joseph H. Shepherd, John J. Shepherd and Keith Shepherd, Appellees published notice of their intent to declare the mineral interest abandoned in *The Times Leader*, a newspaper of general circulation in Belmont County, on September 29, 2011, pursuant to R.C. 5301.56 (E)(1).

[3] R.C. 5301.56 (effective June 30, 2006)

On October 28, 2011, three of the Appellants herein[4] filed an Affidavit of Claim to Preserve Mineral Interest in the Belmont County Courthouse thereby clouding Appellees' title. These three individuals presented no evidence that they received or inherited any ownership in the severed minerals justifying their right to preserve them.[5] [6]

On November 16, 2011, Appellees filed an Affidavit of Abandonment in the Belmont County Courthouse, pursuant to requirements of the 2006 DMA, to complete the abandonment process. Because Barbara Shepherd, Joseph A. Shepherd and David Shepherd were not holders, as defined in R.C. 5301.56 (A)(1) of the 1989 and 2006 DMA, on October 28, 2011, they were not entitled to file an Affidavit of Claim to Preserve Mineral Interest, and the contested oil and gas rights were never properly preserved.

On April 16, 2012, Appellees filed a Complaint to Quiet Title and for Declaratory Judgment to remove the cloud placed on their title filed by three of the Appellants herein. Both parties filed motions for summary judgment. The Belmont County Court of Common Pleas found the 1989 version of the DMA to be constitutional; no saving event occurred following the severance; and the mineral interest in question abandoned and vested in the surface owner pursuant said statute, thereby granting Appellees' motion for summary judgment and denying Appellants' motion for summary judgment. *See* Merit Brief of Appellants, Trial Court Judgment Order A51-A61 and Trial Court Final Judgment Entry A62-A63.

Appellants appealed to the Seventh District Court of Appeals on several issues, including issues of whether the 1989 DMA with a self executing interpretation was constitutional under

[4] Barbara Shepherd, Joseph A. Shepherd and David Shepherd

[5] To date, these three individuals still have not placed any documents on record in the Belmont County Recorder's Office or Probate Court indicating their ownership, or percentage ownership, in these minerals.

[6] All Appellants' interest or percentage interest may still be completely divested through the Probate process.

Ohio's Constitution and whether the enforcement of the 1989 DMA in 2012 is barred by the Statute of Limitations. *See* Merit Brief of Appellants, Notice of Appeal A1-A3. The Seventh District Court of Appeals held, inter alia, that the 1989 version of the DMA is not barred by the statute of limitations and that it is constitutional. *Tribett,* 2014-Ohio-4320, at ¶2.

The Appellants then appealed to this Court on seven (7) different Propositions of Law. This Court granted Appellants' motion for clarification to narrow the scope of the briefing to only Propositions of Law Nos. III and VII. *04/06/2016 Case Announcement #2,* 2016-Ohio-1455. Legal arguments on only these two propositions of law are set forth below.

LEGAL ARGUMENT

The Seventh District Appellate Court properly applied the 1989 version of the DMA to the facts in this case. Joseph H. Shepherd, John J. Shepherd and Keith Shepherd were the mineral interest holders by reservation in a deed dated October 16, 1962. From that date, there were no Saving Events that took place. The 1989 Shell Mining Deed and the 1992 R&F Coal Deed were not Saving Events. On March 22, 1992 title to all the oil and gas mineral interest was abandoned and automatically and irrevocably vested in the surface owner, Appellees, pursuant to the clear language of the 1989 DMA.

Proposition of Law No. III:

The 1989 version of the DMA with a "self-executing" application does not violate the Ohio Constitution

A. Background of the enactment of the 1989 DMA.

The Ohio legislature when originally enacting the 1989 DMA had to weigh the property rights and the constitutionally protected due process rights of a severed oil and gas mineral interest holder against the overriding and compelling general public interest to enable and encourage the marketability and beneficial use of mineral resources. To protect the severed mineral interest holder's rights and to afford him sufficient constitutionally protected due process and to negate the retroactively applied affect of this statute, the Ohio legislature included as part of the Ohio Dormant Mineral Act, Section (B)(2) (quoted below). This provision negated the immediate retroactive taking of the holder's interest which would have deprived the holder his due process rights, but instead gave the severed mineral interest holder three years to avail himself of one of the enumerated "Saving Events" to preserve his interest. If he chose not to

exercise this option, the abandoned mineral interest would become reunited with the surface owner.

B. The 1989 DMA provides for a "self-executing" application.

The 1989 DMA states that the failure of the holder of a severed mineral interest to take any of certain listed actions with respect to the severed mineral interest for a period of twenty years causes the interest to be deemed abandoned and automatically vested in the surface owner. R.C. §5301.56(B) (effective March 22, 1989). The Legislature's choice of the word "abandoned" is significant for it typically means the absolute loss of ownership. To have abandoned property is to have lost "all right, title, claim, and possession" to it. *Doughman v. Long*, 536 N.E.2d 394, 399 (Ohio Ct. App. 1987). The Legislature's use of the word "vests" is also significant. Generally, it is defined as recognizing a fixed property right. "The standard definition of 'vest' is 'to give an immediate fixed right of present or future enjoyment.'" *State v Zupnik*, 111 N.E.2d 42, 43 (Ohio 1952). By using "abandoned" and "vests" to describe the mineral interest, the Legislature evinced its intent that the law be self-executing, and the ownership definite and irrevocable.

In this case, the mineral interest was severed from the surface estate on October 11, 1962, by Joseph, John, and Keith Shepherd. No Saving Event took place from October 11, 1962 to March 22, 1992, the first available date of minerals vesting in surface owners pursuant to Section (B)(2) of the 1989 DMA. Therefore, pursuant to the 1989 DMA, the governing statute at that time, title to the oil and gas vested in the surface owner, Appellees predecessors in title, on March 22, 1992. The 1989 DMA created a vested property right in the surface owner, as a matter of law. *Tribett*, 2014-Ohio-4320, at ¶¶ 43-47.

C. The lower court's focus on the United States Supreme Court decision in *Texaco, Inc. v. Short* is proper and should be controlling.

In presenting their argument, Appellants claim the focus of the lower court on *Texaco, Inc. v. Short* is misplaced because it was not decided in accordance with Ohio's Constitution. However, the *Texaco, Inc. v. Short* decision is not misplaced because it provides the constitutional solution to the national dilemma of addressing non-productive abandoned minerals. Multiple states have attempted to resolve the dilemma of balancing the need to reunite abandoned mineral rights in a way that provides due process to severed mineral interest owners; those state legislators failed. *Wilson v. Bishop,* 82 Ill.2d 364, 412 N.E.2d 522 (Ill. 1980); *Cantos v. Herbst,* 278 N.W.2d 732 (Minn. 1979); *Wheelock & Manning OO Ranches, Inc. v. Heath,* 201 Neb. 835, 272 N.W.2d 768 (Neb. 1978); *Chicago & N.W. Transp. Co. v. Pedersen,* 80 Wis.2d 566, 259 N.W.2d 316 (Wisc. 1977). All four of these state Supreme Court decisions were rendered before the United States Supreme Court determined Indiana's dormant mineral statute constitutional. *Texaco, Inc. v. Short,* 454 U.S. 516 (1982).

The Indiana Legislature, in an attempt to understand the prior courts' dilemma to find dormant mineral legislation constitutional, created a dormant mineral statute that included a time period (two years) for mineral interest holders to use or preserve their rights before they would be considered abandoned and vested in the surface owner. Ind. Code. §§ 35-5-11-1 through 32-5-11-8 (1976). The United States Supreme Court determined in *Texaco, Inc. v. Short* that this kind of dormant mineral statute, with a time period of at least two years for mineral interest holders to essentially save their interest from being abandoned, provides adequate due process to severed mineral interest holders, and is therefore constitutional. *Texaco,* 454 U.S. 526 (holding there was

no constitutional right for a mineral interest owner to receive individual notice that his right will expire).

After *Texaco, Inc. v. Short* was decided in 1982, the Ohio Legislature created the 1989 DMA, effective March 22, 1989, which is similar to Indiana's but includes a three year time period to give mineral interest holders the opportunity to preserve their rights. Ohio's 1989 DMA therefore provides more due process than the constitutionally upheld Indiana dormant mineral statute, and is therefore constitutional under the United States Constitution. The 1989 DMA is also constitutional under the Ohio Constitution as set forth below.

D. The 1989 version of the DMA does not violate the due process protections of Article I, Section 1 or 19 of the Ohio Constitution.

Article I, Section 1 of the Ohio Constitution provides that all men have the inalienable right to acquire, possess, and protect property. Article I, Section 1, Ohio Constitution. Article I, Section 19 of the Ohio Constitution provides that this property right shall ever be held inviolate, ***but subservient to the public welfare***. Article I, Section 19, Ohio Constitution (emphasis added). In the event the public welfare outweighs the ownership of these inviolate property rights, then a property owner may lose their property interest; however, no property owner may be deprived of his property right without due process of law. *Cleveland v. Ruple*, 130 Ohio St. 465, 469, 200 N.E. 507 (1936); Fourteenth Amendment, Section 1, United States Constitution.

The 1989 DMA is constitutional. Abandoning stale, forgotten mineral interest, and placing them back into productive use is of significant public welfare. Ohio has arguably the largest variety of natural resources than any other state in the Union. Ohio has an established history in utilizing and governing these natural resources to maximize benefit to the public. Legislation that places abandoned minerals back into productive use is of significant public

interest. The productive use of minerals creates jobs, income, tax revenue, boosts local, domestic and international economies, and creates a valuable and affordable energy source. The benefit of productive minerals to the general welfare is greatly outweighed by the property rights of long lost severed mineral interest holders who have long died or otherwise abandoned their interest.[7]

1. The 1989 DMA provides adequate due process.

The 1989 DMA provides adequate and constitutional due process. *Texaco, Inc. v. Short* holds that an abandonment statute of dormant minerals that incorporates a reasonable amount of time to allow severed mineral interest owners the opportunity to preserve their mineral interest is constitution under a due process attack. *Texaco,* 454 U.S. 526.

The Appellants argue in their Merit Brief that the 1989 version of the DMA violates the Ohio Constitution's "special due process guarantees" by not providing Advance Notice or Process to the severed mineral interest owner before divesting him of his property rights.

When the statue was enacted on March 22, 1989, the severed mineral interest holder was given Advance Notice that unless he took some action within a three year time period of enactment, his mineral interest would automatically be deemed abandoned and irrevocably vest in the surface owner. "It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property." *Id.* Therefore, when the 1989 DMA was enacted on March 22, 1989, Joseph H. Shepherd, John J. Shepherd, and Keith Shepherd were placed on notice that if they did not use or preserve their severed mineral interest by March 22, 1992, the same would be considered abandoned and placed back into the bundle of sticks of the surface owner's property rights.

[7] It should be noted that Appellees, surface owners, attempted to make productive use of the minerals underlying their 61-Acre property prior to any of the record holders, Joseph H. Shepherd, John J. Shepherd, and Keith Shepherd, or any of the Appellants joined as a party to this lawsuit.

The 1989 DMA also provided the severed mineral owner a Process to preserve and protect his interest from abandonment by exercising one of six enumerated "Saving Events." R.C. 5301.56 (B)(1)(c). Additionally, the statute goes to the extent of laying out exactly how to preserve this interest with an affidavit, what the affidavit is to contain, and when and where it is to be filed. R.C. 5301.56 (C). Further, the statute explains that with successive filings of this affidavit, an owner may preserve these mineral interests indefinitely. R.C. 5301.56 (D)(1). Thus the constitutional sanctity of both Notice and Process have been addressed and provided for in the 1989 version of the DMA.

2. The 1989 DMA does not violate Article I, Sections 1 and 19 of the Ohio Constitution for vagueness.

A statute is not void for vagueness simply because it could be worded more precisely or with additional certainty. *City of Norwood v. Horney*, 110 Ohio St.3d 353 (2006). The critical question in all cases is whether the law affords a reasonable individual of ordinary intelligence fair notice and sufficient definition and guidance to enable him to conform his conduct to the law. *Id.* The 1989 DMA provided this notice, definition and guidance, and is therefore, not unconstitutionally vague.

The 1989 DMA provides sufficient notice of its proscriptions to facilitate compliance by persons of ordinary intelligence. The plain text of the statute is clear that if a mineral interest is "abandoned" it will "vest" with the surface estate if it is not "preserved." R.C. 5301.56 (B)(1)-(C)(1). The statute states that a mineral interest will be "deemed abandoned" if none of the enumerated saving events have transpired. R.C. 5301.56 (B)(1). Further, the statute clearly states how a mineral interest holder may preserve their interest in subsection (C), which provides:

> (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.

The statute is clear in its application and explanation of how to preserve a severed mineral interest. It has never been presented that Joseph H. Shepherd, John J. Shepherd, and Keith Shepherd, or any of the Appellants herein didn't understand how to preserve their rights. The fact is that they failed to preserve their rights.

The 1989 DMA is also specific enough to prevent official arbitration or discrimination in its enforcement. The 1989 DMA applied to all severed mineral interest owners. Regardless of whether an owner severed the mineral estate in 1920 or 1961, whether they only severed a fractional interest or the entire estate, or whether they transferred their mineral interest by deed or through probate, the 1989 DMA applied to all severed mineral interest owners.

Finally, the Appellants argue that if a statute simply invites the clarification or interpretation of a court that it is therefore unconstitutional. The *Norwood* case clarifies that "simply because it could be worded more precisely with additional certainty" that the statute is not void for vagueness and therefore, not unconstitutional. *Norwood*, 110 Ohio St. 3d 353. A statute that may be interpreted differently by different legal minds cannot be per se vague, void, or unconstitutional. To adopt this logic would hold every statute subject to interpretation unconstitutional. The 1989 DMA is clear in its application and effect, is not void for vagueness and therefore, constitutional.

E. The 1989 DMA does not violate Article II, Section 28 of the Ohio Constitution.

The primary focus of Appellants' argument of "unconstitutionality" of the 1989 DMA centers around Article II, §28, which prohibits the General Assembly from passing retroactive laws. Article 2, Section 28, Ohio Constitution. "The test for unconstitutional retroactivity requires the court first to determine whether the General Assembly expressly intended the statute to apply retroactively. *Bielat v. Bielat*, 87 Ohio St. 3d 350, 353 (2000). If so, the court moves on to the question of whether the statute is substantive, rendering it *unconstitutionally* retroactive, as opposed to merely remedial." *Id.* "A purely remedial statute does not violate Section 28, Article II of the Ohio Constitution, even when it is applied retroactively." *Id.* at 354. The 1989 DMA is constitutional because the legislature did not expressly intend the statute to be retroactive. Even if it can be argued that the legislature "expressly intended" the Ohio Dormant Mineral Act to look back twenty years for calculation purposes, its application is prospective and curative, not retroactive.

When enacting the 1989 DMA, the legislature expressly did not intend for it to apply retroactively. To negate any unconstitutional retroactive effect or any unconstitutional taking without due process of law, the Ohio legislature included as part of the statute §5301.56(B)(2):

> (2) A mineral interest shall not be abandoned under division (B)(1) of this section... until three years from the effective date of this section.

In other words, no title to any mineral interest will be deemed abandoned and vested in the surface owner until March 22, 1992, three years after R.C. 5301.56 went into effect. This is a prospective application of the statute and not a retroactive application.

The 1989 DMA did not proclaim any previous title transaction void. It also did not instantaneously vest a previously owned property right into someone else's ownership.[8] The statute merely defined the parameters for dormant mineral abandonment, and afforded the mineral interest holder an opportunity within a three year time period to preserve his or her interest from being abandoned. "It is well established that persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property." *Texaco,* 454 U.S. 532. This statute therefore provided a reasonable and fair opportunity for the severed mineral interest holder to protect and preserve his or her voluntarily abandoned interest.

In the unlikely event this Court does find the 1989 DMA retroactive, it is merely remedial in nature. Remedial provisions have to do with the methods and procedure by which rights are recognized, protected and enforced, not with the rights themselves. *Weil v. Taxicabs of Cincinnati, Inc.*, 139 Ohio St. 198, 205 (1942). The 1989 DMA did not take away any vested property rights when it was enacted in 1989. The statute established a clear procedure for mineral interest holders to preserve their mineral interest by performing any one of certain enumerated actions. The entire purpose of the statute is remedial and curative in nature, it places valuable abandoned mineral interests back into productive use by reuniting the mineral interest with the surface estate. Ohio law has long favored the productive use of its natural resources and has a substantial governmental interest in creating such a statute.

The automatic and self-executing feature of the 1989 version of the Ohio Dormant Mineral Act is at worst permissibly retroactive and not unconstitutional. In *Bielat v. Bielat,* the court concluded:

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[8] The 1989 DMA was effective March 22, 1989, but vestiture of abandoned mineral interests back into the surface estate was not effective until March 22, 1992.

> "Our conclusion is supported by cases that have defined remedial laws as those that "merely substitute a new or more appropriate remedy for the enforcement of an existing right." Legislation is remedial, and therefore permissibly retroactive, when the legislation seeks only to avoid "the necessity for multiplicity of suits and the accumulation of costs [or to] promote the interest of all parties."" *Bielat*, 87 Ohio St. 3d 354, quoting, *State v. Cook,* 83 Ohio St. 3d at 411, 700 N.E.2d at 577 and *Rairden v. Holden,* 15 Ohio St. at 211.

The 1989 version of the Ohio Dormant Mineral Act provides hundreds of surface owners the ability to timely and economically recover the otherwise non-productive abandoned mineral interest underneath their surface without hundreds of expensive time consuming lawsuits and at the same time affording the severed mineral interest holder the opportunity to protect and preserve their interest. This statute is not unconstitutional, it is curative. It cures the problem of thousands of acres of non-productive abandoned mineral interests becoming available for productive use.

The lower appellate court was therefore proper in finding the 1989 DMA constitutional under the United States Constitution and the Ohio State Constitution.

Proposition of Law No. VII:

The statute of limitations in R.C. 2305.04 does not apply to the facts presented in this case.

Ohio Revised Code §2305.04 establishes a time limit to bring an action to recover title or possession of real estate; it provides:

> "[a]n action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued..."

In this case, Appellees are not attempting to recover title or possession of real estate. Appellees acquired title to their oil and gas pursuant to the 1989 DMA. Appellees filed a Quiet Title Action to remove the cloud placed on their title by three of the Appellants herein, not to recover title or possession of their real estate. Therefore, the Statute of Limitations established in R.C. 2305.04 does not apply in this case.

Assuming arguendo that Appellees are attempting to recover title or possession of real estate and R.C. 2305.04 therefore applies in this case, R.C. 2305.04 still does not bar Appellees claim because the cause of action accrued within the twenty-one year time period required by the statute. Appellants contend that Appellees' cause of action accrued on March 22, 1989. It did not. Appellees cause of action, as far as the Statute of Limitations is calculated, accrued on October 28, 2011, when three of the Appellants in this case, Barbara Shepherd, Joseph Shepherd, and David Shepherd, filed an Affidavit of Claim to Preserve Mineral Interest.

Appellees were granted title to the 61-Acre property in question by General Warranty Deed dated February 26, 1996 of record in Volume 716, Page 446 of the Record of Deeds in Belmont County, Ohio and by General Warranty Deed dated March 7, 2006 of record in Volume 47, Page 258 of the Records of the Deeds of Belmont County, Ohio. In these deeds, Appellants received the surface estate and all the oil and gas pursuant to the 1989 DMA.

In 2011, three of the Appellants herein placed on record an Affidavit of Claim to Preserve Mineral Interest which in effect simultaneously created a cloud on Appellees' title. This Affidavit tolled the Statute of Limitations. Appellees filed a Quiet Title Action on April 16, 2012, which was well within the twenty-one year time period required by R.C. §2305.04.

The 1989 DMA required no legal action to be taken by the surface owner. As previously stated, the law was "self-executing." The statute provided that the interest would be automatically and irrevocably abandoned if certain events occurred without any action on behalf of the mineral interest holder. Therefore, no cause of action accrued for the purpose of tolling the Statute of Limitations until Appellants filed their Affidavit of Claim to Preserve Mineral Interest.

Moreover, assuming arguendo that Appellees cause of action accrued prior to Appellants clouding Appellees' title, R.C. 2305.04 *still* does not bar Appellees claim because the cause of action accrued within the twenty-one year time period required by the statute. At the earliest, Appellees' cause of action accrued on March 22, 1992, the date the "self-executing" feature of the 1989 DMA became effective. *Tribett,* 2014-Ohio-4320, at ¶53. Appellees filed the quiet title action in the Belmont County Court of Common Pleas in April 2012. At that time, the limitations period had not expired.

The statute of limitations in R.C. 2305.04 therefore does not apply to the facts presented in this case and in the alternative does not bar Appellees claim.

CONCLUSION

The 1989 DMA is constitutional. The statue is not retroactive because of the three-year grace period for severed mineral interest owners to preserve their interest before an abandonment is effective. Even if the statute is retroactive, it is permissibly retroactive and therefore constitutional because it is remedial and curative in nature.

Additionally, the 1989 DMA does not violate the due process clause of the Federal Constitution or Ohio Constitution. It provides both Notice and Process to the severed mineral interest owner. It is clear in its uniform application and provides sufficient notice of its proscriptions to facilitate compliance by persons of ordinary intelligence.

Application of the 1989 DMA is not barred by the Statue of Limitations in R.C. 2305.04 because Appellees in this case did not bring an action to recover title or possession of real property. In addition, Appellees cause of action accrued on October 28, 2011 when Appellants created a cloud on Appellees' title by filing their Affidavit of Claim to Preserve Mineral Interest. At the absolute earliest, Appellees cause of action accrued on March 22, 1992, the effective date of automatic abandonment and vestiture of the 1989 DMA. Regardless, Appellees quiet title action was filed April 16, 2012, well within twenty-one years from either above date.

For all the reasons set forth above, the Seventh Appellate District ruling should be upheld and affirmed as to the issues presented.

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I hereby certify that a copy of the foregoing was sent by regular U.S. Mail this 18th day of May, 2016, to:

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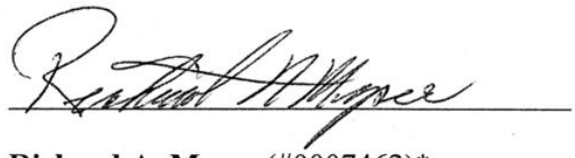

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