[Cite as *Carney v. Shockley*, 2014-Ohio-5829.]

STATE OF OHIO, JEFFERSON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

TODD CARNEY, et al.,	)	
	)	CASE NO. 14 JE 8
PLAINTIFFS-APPELLEES,	)	
	)	
VS.	)	O P I N I O N
	)	
RONNIE LEE SHOCKLEY, et al.,	)	
	)	
DEFENDANTS-APPELLANTS.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court, Case No. 12CV514.
JUDGMENT:	Reversed and Remanded.

JUDGES:
Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: December 29, 2014

APPEARANCES:

For Plaintiffs-Appellees:

Attorney Steven Shrock
Attorney Clinton Bailey
138 East Jackson Street
Millersburg, Ohio 44654
(For Todd Carney)

Attorney Michael DeWine
Ohio Attorney General
Attorney Jennifer Cleary
Attorney Gerald Dailey
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, C-2
Columbus, Ohio 43229-6693
(For Ohio Attorney General
Michael DeWine)

For Defendants-Appellants:

Attorney Mark F. Okey
Attorney Mark D. Okey
593 6th Street, NW
P.O. Box 126
Carrollton, Ohio 44615

VUKOVICH, J.

{¶1} Defendants-appellants Ronnie Lee and Bonnie Sue Shockley appeal the decision of the Jefferson County Common Pleas Court concluding that they abandoned their interest in the minerals underlying the property of plaintiff-appellee Todd Carney. The trial court's application of a rolling look-back period under the 1989 Dormant Mineral Act prompted the Shockleys to invoke their counterclaim asserting that interpretation of the statute as providing for a rolling look-back would be an unconstitutional deprivation of due process due to lack of notice of what was required and concerns of vagueness. The trial court disagreed with this argument as well and thus concluded that the mineral interest was abandoned due to the lack of savings events occurring after the first look-back period.

{¶2} Since that decision, this court has ruled that only a single, fixed look-back period can be used under the 1989 DMA. The trial court's decision to apply a rolling look-back period thus conflicts with this court's recent decisions in *Eisenbarth*, *Tribett*, *Farnsworth*, and *Taylor*. The mineral interest owned by the Shockleys was first severed in a deed recorded on August 11, 1972. With the look-back period fixed at the twenty years preceding March 22, 1989 (plus a three year grace period during which a savings event could occur thereafter), the Shockleys' mineral interest was not abandoned. Therefore, the judgment of the trial court is reversed, and this case is remanded for implementation of this judgment.

STATEMENT OF THE CASE

{¶3} In October of 2012, Todd Carney filed a complaint seeking to reunite the minerals underlying his 45 acres in Jefferson County with the surface of said land. Half of the mineral rights were held by Mary Katherine Kerns and Beverly Lamotte, who are the appellants in *Carney v. Shockley*, 7th Dist. No. 14JE9.[1] The other half of

[1]Upon request, that case was initially consolidated with this case. However, two separate appellant briefs were filed, the minerals were reserved at different times, the Ohio Attorney General is only involved in this appeal, and the issues raised in the briefs are different. More specifically, the issue in 14JE9 is whether we are maintaining our holdings that the 1989 DMA can still be used to formalize prior abandonments. *See, e.g., Dahlgren v. Brown Farm Props., LLC*, 7th Dist. No. 13CA896, 2014-Ohio-4001; *Swartz v. Householder,* 7th Dist. Nos. 13JE24, 13JE25, 2014-Ohio-2359; *Walker v. Shondrick-Nau*, 7th Dist. No. 13NO402, 2014-Ohio-1499 (fka *Walker v. Noon*). There is no issue with

the mineral rights were held by Ronnie Lee and Bonnie Sue Shockley, the appellants in this case, 14JE8.

{¶4} The Shockley mineral interest was first severed and reserved in a deed recorded on August 11, 1972. The parties agreed in a stipulation of facts that no savings events occurred thereafter (until a claim to preserve was recorded by the Shockleys on December 6, 2011). Carney's complaint urged that the Shockleys' minerals were abandoned under the 1989 Dormant Mineral Act as of August 12, 1992, twenty years after severance. (Carney did not seek to have the Shockleys' minerals declared abandoned under 2006 DMA.)

{¶5} The Shockleys counterclaimed seeking quiet title and a declaratory judgment that the 1989 DMA can no longer be used as it was repealed on June 30, 2006. If the 1989 DMA was still available for use, they asked the court to declare that there was no abandonment under the 1989 DMA because it contained a fixed look-back period of twenty years from the March 22, 1989 date of enactment or that a rolling look-back period would be unconstitutional.

{¶6} Competing motions for summary judgment were filed. The Shockleys' motion argued that there was no abandonment under the 1989 DMA because the look-back period was fixed at twenty years from the date of enactment. Carney argued that the minerals were abandoned because the statute contained a rolling window for looking back and there were no savings events within twenty years after the 1972 reservation.

{¶7} On November 4, 2013, the Jefferson County Common Pleas Court granted summary judgment in favor of Carney, concluding that the look-back period under the 1989 DMA was rolling rather than static. The order was not final at that time. The court explained that the Shockleys' claim involving the constitutionality of the 1989 DMA would remain pending and that further motions would be filed on that claim. The Ohio Attorney General was served and intervened in order to support the

---

the look-back period in 14JE9, and the appellants in the present case do not ask us to reconsider *Walker* and its progeny. Thus, the cases are hereby deconsolidated, and separate appellate opinions are issued.

constitutionality of a rolling look-back period.[2] *See* R.C. 2721.12(A) ("when declaratory relief is sought under this chapter in an action or proceeding, all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding. * * * if any statute * * * is alleged to be unconstitutional, the attorney general also shall be served with a copy of the complaint in the action or proceeding and shall be heard.").

{¶8} The parties filed motions as to whether the use of a rolling look-back period rendered the 1989 DMA unconstitutional. The Shockleys urged that the 1989 DMA violated their due process rights due to the trial court's finding that it contained a rolling look-back period. They asserted that the trial court's interpretation of the look-back period resulted in a vague statute. They urged that a reasonable person could interpret "within the preceding twenty years" to mean from the date of enactment, and thus, under the first aspect of the vagueness test, a person of ordinary intelligence was not on notice as to how to preserve their mineral interests. They also urged, as to the second aspect of the vagueness test, that the law was not specific enough to prevent official arbitrariness or discrimination in its enforcement. Carney and the Ohio Attorney General disputed these arguments, responding that a rolling look-back period was the only reasonable interpretation of the statute and that there was no indication that official arbitrariness or discrimination in enforcement could result.

{¶9} On February 18, 2014, the trial court granted summary judgment in favor of Carney and the Ohio Attorney General, concluding that the alleged ambiguity as to the nature of the look-back period did not rise to the level of unconstitutional vagueness or violate due process as a reasonable individual of ordinary intelligence would have understood that the statute operated on a rolling basis. The Shockleys filed a timely notice of appeal.

---

[2]We note that the Ohio Attorney General filed an amicus curiae brief "in support of neither party" in the Supreme Court's pending *Dodd v. Croskey* case, asking the Court to refrain from addressing the 1989 DMA in that case as it was not at issue there. In speaking of the state's interest as amicus, that brief mentioned that the state was a property owner and that the ownership of minerals underlying the various surface tracts owned by the state has reverted to the state by operation of automatic vesting under the 1989 DMA and the state thus has interests similar to other surface owners.

1989 DORMANT MINERAL ACT

{¶10} Pursuant to former R.C. 5301.56(B)(1), a mineral interest held by a person other than the surface owner of the land subject to the interest shall be deemed abandoned and vested in the owner of the surface unless: (a) the mineral interest deals with coal, (b) the mineral interest is held by the government, or (c) a savings event occurred within the preceding twenty years.

{¶11} The six savings events are as follows: (i) the mineral interest has been the subject of a title transaction that has been filed or recorded in the recorder's office; (ii) there has been actual production or withdrawal by the holder; (iii) the holder used the mineral interest for underground gas storage; (iv) a mining permit has been issued to the holder; (v) a claim to preserve the mineral interest has been filed; or (vi) a separately listed tax parcel number has been created. R.C. 5301.56(B)(1)(c)(i)-(vi).

{¶12} In accordance, the Shockleys' mineral interest shall be deemed abandoned and vested in the surface owner unless there was a savings event "within the preceding twenty years." The parties have different answers to the question: within the preceding twenty years of what?

{¶13} The effective date of this statute was March 22, 1989, but a grace period was provided whereby a mineral interest shall not be deemed abandoned due to a lack of (B)(1) circumstances until three years from the effective date of the statute. R.C. 5301.56(B)(2). Another section provides that a mineral interest may be preserved indefinitely from being abandoned by the occurrence of any of the savings events in (B)(1)(c), including, but not limited to, successive filings of claims to preserve mineral interests. R.C. 5301.56(D)(1).

ASSIGNMENT OF ERROR & LAW

{¶14} The Shockleys assign as error: "The trial court erred in granting summary judgment for the plaintiff-appellee." They argue that the trial court's decision (that the look-back period in the 1989 DMA is not static or fixed but is continuous or rolling) renders the 1989 DMA unconstitutional because it is void for vagueness and thus violates their due process rights. The vagueness doctrine is a component of due process as "[d]ue process demands that the state provide meaningful standards in its laws [and] give fair notice to the citizenry of the conduct proscribed and the penalty to

be affixed." *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 81.

{¶15} The Shockleys point out that the Ohio Constitution provides that people "have certain inalienable rights, among which are those of * * * acquiring, possessing, and protecting property * * *." Article I, Section 1 of the Ohio Constitution. They distinguish the *Texaco* decision upholding Indiana's Dormant Mineral Act on due process grounds, noting that vagueness was not addressed and that the language of Ohio's constitution and its statutory look-back period is different from Indiana's. *See Texaco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982) (finding that the self-executing feature of Indiana's statute was not violative of due process merely because it did not require the surface owner to give pre-abandonment notice).

{¶16} The Shockleys cite the Ohio Supreme Court's *Norwood* case and argue that a person of ordinary intelligence had no reasonable opportunity to know that the 1989 DMA carries with it a rolling look-back period. *Norwood*, 110 Ohio St.3d 353 at ¶ 84, 86 ("the critical question 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"). They state that when a constitutional right such as a property right is threatened, then a more stringent test of vagueness is applied. *Id.* at ¶ 85, 88 (applying more stringent vagueness evaluation to eminent domain statute).

{¶17} The Shockleys also state that if a rolling window is used, the statute is not specific enough to prevent official arbitrariness or discrimination in its enforcement, which is an additional reason that a law can be considered unconstitutionally vague. *See id.* at ¶ 84. On this point, they set forth a confusing argument that a rolling analysis will create winners and losers in an arbitrary fashion depending on whether a surface owner is "litigious." However, said argument does not relate to *official* arbitrariness or discrimination in enforcement. Here, there are basically two interpretations being used: a fixed or static look-back period of twenty years from the date of enactment (but with a three year grace period during which a mineral holder can preserve) or a rolling or continuous look-back period that essentially counts forward twenty years from the last savings event.

{¶18} In making the argument on the second aspect of vagueness, appellant seems to be under the impression that the two statements in *Norwood* are each required elements before finding a law vague. However, both elements are not required for finding a law vague, but are each independent reasons that can support a determination that a law is vague. *See id.* at ¶ 84, 86; *Chicago v. Morales*, 527 U.S. 41, 56, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999). That is, a law is vague if it offends the value that a law must provide specific notice of its requirements to allow a person of ordinary intelligence to comply, and/or a law is also vague if it offends the value that a law must be specific enough to prevent official arbitrariness or discrimination in its enforcement. *See id. See also Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972) (outlining the important values a vague law offends, rather than imposing a multi-part test on the law's challenger); *Papachristou v. Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972).

{¶19} Carney and the Ohio Attorney General respond that a person challenging the constitutionality of an Ohio statute bears a heavy burden of proof as it must be established beyond a reasonable doubt that the statute is unconstitutional. *See In re Application of Columbus S. Power Co.*, 134 Ohio St.3d 392, 2012-Ohio-5690, 983 N.E.2d 276. It is pointed out that a statute is not unconstitutionally vague merely because it could have been worded more precisely or with additional certainty. *See Norwood*, 110 Ohio St.3d 353 at ¶ 86.

{¶20} And, courts have an obligation to construe a statute in order to save it from being declared unconstitutional. *Desenco, Inc. v. Akron*, 84 Ohio St.3d 535, 538, 706 N.E.2d 323 (1999). It is also emphasized that statutes often require judicial interpretation due to ambiguities, but such ambiguities do not automatically mean that a statute is vague. *See Columbus S. Power Co.*, 134 Ohio St.3d 392 at ¶ 20, 32. Rather, the rules of judicial interpretation are employed, and this process of interpretation reduces facial vagueness concerns. *Id.* (a process of statutory interpretation should be permitted to "flesh out" statutory standards).

{¶21} "Under the rules of statutory construction, if an ambiguous statute is susceptible of two interpretations and one of the interpretations comports with the Constitution, then that reading of the statute will prevail and the court will avoid striking

the statute." *McFee v. Nursing Care Mgt. of Am., Inc.*, 126 Ohio St.3d 183, 2010-Ohio-2744, 931 N.E.2d 1069, ¶ 27, citing *City of East Cleveland v. Evatt*, 145 Ohio St. 493, 496, 31 O.O. 167, 62 N.E.2d 325 (1945) ("It is an accepted canon of construction that, where a statute is susceptible of two interpretations, one of which will preserve its constitutionality and the other not, the courts will construe the enactment so as to save its validity."). For instance, if a general class of offenses to which a statute applies "can be made constitutionally definite by a reasonable construction of the statute," the court is obliged to give the statute that construction. *United States v. Harriss*, 347 U.S. 612, 618, 74 S.Ct. 808, 98 L.Ed. 989 (1954), fn. 6.

ANALYSIS & APPLICATION OF PRECEDENT

{¶22} In this case, one side argued that there is a sole, fixed look-back period and that reading the statute in favor of a rolling period would render the look-back period unconstitutionally vague and violative of due process. The other side agreed that there exists that initial look-back period but further contended that the period keeps rolling forward and that such a rolling period does not render the statute unconstitutionally vague as it is the only reasonable interpretation.

{¶23} Since briefing in this case, this court has ruled on the issue of whether a fixed or rolling look-back period applies and has decided multiple times that a fixed look-back period is to be utilized. *Eisenbarth v. Reusser*, 7th Dist. No. 13MO10, 2014-Ohio-3792; *Tribett v. Shepherd*, 7th Dist. No. 13BE22, 2014-Ohio-4320; *Taylor v. Crosby*, 7th Dist. No. 13BE32, 2014-Ohio-4433; *Farnsworth v. Burkhart*, 7th Dist. No. 13MO14, 2014-Ohio-4184. This court opined that if the legislature intended that a savings event occurring in the original look-back period would last only twenty years, they did not clearly state this. *Eisenbarth*, 7th Dist. No. 13MO10 at ¶ 45.

{¶24} We noted that Indiana's statute (at issue in *Texaco*) discussed abandonment if the mineral interest was "unused for a period of twenty years" (defining "use" with a list of savings events). *Id.* The appellees here believe that Indiana's language is more uncertain than the "within the preceding twenty years" language used in Ohio's 1989 DMA. However, we expressed that Indiana's language more clearly showed that the period is twenty years from the last savings event. *See id*. (as compared to the 2006 DMA, which specifies twenty years immediately

preceding the date on which notice is served or published, or Ohio's DUI statutory look-back period, which specifies, "within twenty years of the offense").

{¶25} The appellees point out that another division of the DMA provides that a mineral interest "may be preserved indefinitely from being deemed abandoned" by a savings event including "successive filings of claims to preserve. *See* R.C. 5301.56(D)(1). Yet, this court was not convinced by the "in pari materia" argument that this other language plainly evidences a rolling look-back period, and we noted that additional language connected the look-back with the date of enactment. *Id.* at ¶ 40, 49. We suggested that the language could merely be a reference to any preservations filed under the OMTA as it existed prior to the 1989 DMA in order to show that a new claim to preserve can still be filed if the old one was filed outside of the new twenty year look-back period. *Id.* at ¶ 49. In dispensing with a "dead letter law" argument, we also noted that the statute's point may have been to give three years to refresh or lose stale claims with plans to enact a new version for the next twenty-year period if public policy reasons for abandonment still applied in the future, and the legislature did enact a new version less than twenty years later adding many new features evincing its new public policy. *Id.* at ¶ 50 ("or the intent was multiple future periods, but that intent was not properly expressed.").

{¶26} This court stated that a reasonable person would read the statute at the time of enactment and the language, "preceding twenty years" (without stating preceding twenty years of what), would cause them to believe that they were safe if they had a savings event after March 22, 1969 (and that they could save themselves in the three years after enactment as well). *Id.* at ¶ 47-48. This is not to say that they are saved "forever" as appellees urge, but saved until some other legislation imposes new obligations to act.

{¶27} Pointing out that forfeitures are abhorred in the law, we refused to extend that original look-back period from fixed to rolling by applying a look-back period that entailed the preceding twenty years of every single day after the statute was enacted, i.e. we refused to read language into the statute that a savings event had to occur twenty years since the last savings event. *See id.* at ¶ 46, 49. We thus concluded that

the language "preceding twenty years," without stating preceding twenty years of what, did not create a rolling look-back period. *Id.* at ¶ 48.

{¶28} Consequently, this court found that the initial look-back period was clear but subsequent periods were not and thus refused to permit the application of subsequent periods. Statutes are to be construed in favor of constitutionality. *McFee*, 126 Ohio St.3d 183 at ¶ 27 (if one of two interpretations comports with the constitution, then that reading of the statute will prevail in order to avoid striking a statute). We effectively construed the statute in a manner that ended up eliminating arguments concerning unconstitutionality of the look-back period. *See Columbus S. Power Co.*, 134 Ohio St.3d 392 at ¶ 20, 32 (ambiguity can be eliminated or interpreted under rules of construction to avoid constitutional infirmities). Our prior holdings essentially subsume and avoid the penultimate issue presented herein.

{¶29} In conclusion, our recent holdings dispense with the Shockleys' concern that the statute is vague if a rolling look-back period is applied. The Shockleys do not believe the statute is vague if a fixed look-back is applied, which is the period this court has adopted and the period to be applied here as well. The mineral interest owned by the Shockleys was first severed in a deed recorded on August 11, 1972. With the look-back period fixed at the twenty years preceding March 22, 1989 (plus a three-year grace period during which a savings event could occur thereafter), the Shockley's mineral interest was not abandoned.

{¶30} For the foregoing reasons, the judgment of the trial court is hereby reversed, and the case is remanded for implementation of this judgment.

Donofrio, J., concurs.
DeGenaro, P.J., concurs in judgment only with concurring Opinion.

DeGenaro, P.J., concurring in judgment only.

{¶31} I disagree with the majority's analysis here, which follows this district's string of cases holding that the 1989 ODMA controls resolution of this and other cases filed after the effective date of the 2006 ODMA because: a) the 2006 version is clear

and unambiguous and amends what the Ohio legislature itself deemed to be an ambiguous and problematic statute; and b) the 1989 ODMA is unconstitutional both facially and as applied by the majority here and prior decisions. Applying the 2006 ODMA to the facts of this case, I would concur with the outcome reached by the majority. Moreover, I write separately to emphasize that, assuming arguendo the 1989 ODMA is constitutional and controlling, the majority has misapplied that version of the statute.

{¶32} My disagreement with the majority's analysis is summarized here, having been more thoroughly explained in the minority opinions in *Eisenbarth v. Reusser*, 7th Dist. No. 13 MO 10, 2014-Ohio-3792, 18 N.E.3d 477 (DeGenaro, P.J. concurring in judgment only), *Farnsworth v. Burkhart*, 7th Dist. No. 13 MO 14, 2014-Ohio-4184 (DeGenaro, P.J., concurring in judgment only) and *Tribett v. Shepherd*, 7th Dist. No. 13 BE 22, 2014-Ohio-4320, (DeGenaro, P.J., dissenting).

{¶33} Turning to the first point, the 2006 ODMA should control resolution of disputes over severed mineral rights where, as here: a) the mineral rights were severed and the surface owner's fee interest was acquired before or during the time frame when the 1989 ODMA was in effect; and b) the surface owner did not claim the mineral rights were abandoned until after the effective date of the 2006 ODMA. The 2006 ODMA must govern for two reasons. First, the ambiguity of the 1989 version of the ODMA is readily apparent. Courts are guided by canons of statutory construction when asked to construe ambiguous statutory language in order to decipher legislative intent. But given the unique procedural circumstances this and the previous cases present, namely, construing an ambiguous statute *after* it has been amended to remove the ambiguity, we need not resort to those canons in order to glean that intent. By virtue of the 2006 ODMA, we have the rare benefit of the General Assembly's statement of its intent with respect to the ambiguous language of the 1989 ODMA. That alone dictates that the 1989 version is no longer controlling; to decide otherwise makes the enactment of the 2006 ODMA meaningless.

{¶34} Second, the 1989 ODMA is unconstitutional both facially and as applied by the majority and the trial court. Because Ohio affords its citizens' property rights with more protection than the federal Constitution or that of Indiana, the United States

Supreme Court decision in *Texaco, Inc. v. Short,* 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982) is not controlling for purposes of interpreting the ODMA. Thus, contrary to prior decisions of this district, the 1989 DMA cannot be interpreted as an automatic, self-executing statute by relying on *Texaco* because it cannot withstand scrutiny under Ohio's constitution. Statutes in derogation of common law should be strictly construed, particularly where forfeiture involves inviolate private property rights protected by the Ohio Constitution.

{¶35} By measuring the 1989 ODMA against federal—rather than Ohio—constitutional property rights standards, and declaring it a constitutional self-executing statute, the majority has created a forfeiture of inviolate private property rights in contravention of Ohio constitutional jurisprudence. The 1989 ODMA's lack of notice provisions makes it unconstitutional on its face, and by construing it as a self-executing statute resulting in automatic abandonment of a severed mineral interest by the holder and vesting that interest in the surface fee owner, the 1989 ODMA is unconstitutional as applied. Such a statutory construction results in an unlawful taking by operation of law, proscribed by Ohio Constitution, Article I, Sections 1 and 9, as construed by the Ohio Supreme Court in *City of Norwood v. Horney,* 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115.

{¶36} Applying the 2006 ODMA to the facts of this case, the Shockleys timely filed a preservation of claim under the 2006 ODMA on December 6, 2011, pursuant to R.C. 5301.56(H), and thus they continue to hold the severed mineral rights. Accordingly, for these reasons, rather than those espoused by the majority, the trial court's decision should be reversed, and title to the severed mineral rights quieted in the Shockleys.

{¶37} And although first and foremost I disagree with the majority's decision that the 1989 statute governs here, I also believe their 1989 ODMA analysis is itself flawed. I disagree with the analysis that the 1989 ODMA has a fixed look-back period, and I interpret the majority's holding as creating a bright-line rule. Instead, determination of whether a severed mineral interest has been abandoned must be decided on a case-by-case basis; courts must determine whether an initial savings event occurred within the original statutory 20-year period, which would then trigger a

successive 20-year period in order to preserve the severed mineral interest. This was the analysis applied by the trial court here, as advocated by the analysis in the minority opinion in *Eisenbarth* and *Farnsworth.* Applying this rationale, the trial court's decision would be correct, assuming the 1989 version governed.

{¶38} The 1989 ODMA contemplates a rolling look-back period which is triggered by a statutorily defined savings event; in this case, the original severance of the mineral interest. As stipulated by the parties and borne out by the record, no savings event took place during the 20 year period which commenced on August 11, 1972, when the mineral interest was originally severed. Because R.C. 5301.56(D)(1) refers to successive filings, the 1989 ODMA contemplated that the holder of severed mineral rights was required to renew that interest of record every 20 years. Thus, the Shockleys would have been required to make some kind of successive filing before the initial 20 year period expired. Because they failed to do so, applying the majority's rationale that the 1989 ODMA is an automatic self-executing statute, and assuming the 1989 ODMA governs, the severed mineral rights would have reverted back to Carney on August 12, 1992. Thus, assuming arguendo that the 1989 ODMA passes constitutional scrutiny as measured against Ohio's constitution, and that version of the ODMA still controls, title to the severed mineral rights would have to be quieted to Carney.

{¶39} As outlined above, however, I firmly believe the 2006 ODMA governs here. Thus, I concur in judgment only and would reverse and remand the trial court's decision and quiet title to the severed mineral rights in the Shockleys pursuant to the 2006 ODMA, which is controlling based upon its plain unambiguous language, and that the 1989 ODMA is unconstitutional on its face and as applied.