

[Cite as *Stevens v. Kelly*, 2017-Ohio-1253.]

STATE OF OHIO, CARROLL COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

THE THOMAS L. STEVENS AND )  
THELMA T. STEVENS REVOCABLE )  
LIVING TRUST DATED SEPTEMBER )  
3, 2013, )

PLAINTIFF-APPELLEE, )

VS. )

RENEE R. KELLY, et al., )

DEFENDANTS-APPELLANTS. )

CASE NO. 14 CA 0903

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from the Court of Common  
Pleas of Carroll County, Ohio  
Case No. 2013 CVH 27491

JUDGMENT:

Reversed and Remanded.

APPEARANCES:

For Plaintiff-Appellee:

No Brief Filed.

For Defendants-Appellants:

Atty. E. Lee Wagoner  
141 2351 Becket Circle  
Stow, Ohio 44224

JUDGES:

Hon. Carol Ann Robb  
Hon. Gene Donofrio  
Hon. Cheryl L. Waite

Dated: March 29, 2017

{¶1} Defendant-Appellant Renee Kelly appeals the decision of the Carroll County Common Pleas Court granting summary judgment for Plaintiff-Appellee Thomas L. & Thelma T. Stevens Revocable Living Trust. This case involves the Ohio Dormant Mineral Act (ODMA) and whether the oil, gas and other mineral rights, excepting coal, underlying Appellee's property were abandoned and deemed vested in the surface owner, Appellee.

{¶2} The trial court determined the 1989 version of the ODMA was applicable, and found the oil, gas and other mineral rights were abandoned and vested in the surface estate. Appellant disagrees with that holding and argues the 2006 version of the ODMA is applicable since Appellee's claim to quiet title was asserted after the 2006 version became effective. Based on the Ohio Supreme Court's decision in *Corban v. Chesapeake Exploration, L.L.C.*, \_\_ Ohio St.3d \_\_, 2016-Ohio-5796, \_\_ N.E.3d \_\_, Appellant's argument has merit. The trial court's grant of summary judgment for Appellee is reversed and remanded for further proceedings.

#### *Statement of the Facts and Case*

{¶3} Appellee owns 120 acres of real property in Carroll County, Ohio. In 1929, W.H. Hildreth sold approximately 158 acres in Carroll County, Ohio, to Perry Q. and Goldie Maloney. In that deed, W.H. Hildreth reserved 1/2 of all coal, oil, gas and other mineral rights for approximately 133 of the 158 acres. The coal rights were later sold. Appellee eventually purchased 120 acres of the 158 acres. W.H. Hildreth's reservation as to the oil, gas, and other mineral rights, excluding the previously sold coal interest, was applicable to the 120 acres Appellee acquired.

{¶4} In 2013, Appellee filed a declaratory judgment/quiet title complaint. Appellee contended the reserved oil, gas and other mineral rights were never transferred or conveyed to any heir or assignee of W.H. Hildreth. Likewise, it asserted for 83 years neither W.H. Hildreth nor his heirs or assigns utilized the oil, gas or other mineral rights under the property. As such, it asked the trial court to apply the 1989 version of the ODMA and find there were no savings events within the

preceding 20 years of the effective date of the 1989 ODMA. In finding as such, it asked the court to hold the oil, gas, and other mineral rights reserved were abandoned and vested in the surface on March 22, 1992. 4/1/13 Complaint.

{¶15} In the complaint, Appellee acknowledged Appellant's mother, acting through her power of attorney, filed a Claim to Preserve on July 27, 2012. This claim stated, "Anita M. Hildreth, as well as the other heirs of William Harrison Hildreth, do not intend to abandon, but do intend to preserve, their rights in the mineral interests described above." Anita's Claim to Preserve. The claim described W.H. Hildreth's reservation to the oil, gas and other mineral rights, excluding coal, in the 133 acres sold in 1929. Anita's Claim to Preserve. Anita asserted W.H. Hildreth had six children and she is the holder of 1/6 of the 1/2 interest. Anita's Claim to Preserve. According to Appellee, the Claim to Preserve did not save the oil, gas and other mineral rights because the interests were abandoned and automatically deemed vested on March 22, 1992. 4/1/2013 Complaint.

{¶16} Following the filing of the complaint, Appellee did cause notices of intent to declare abandonment to be published in the local newspaper in Carroll County. 5/23/13 Invoice and Affidavit of Publication.

{¶17} Appellant filed an answer and counterclaim. In the answer, Appellant explained W.H. Hildreth died in 1944; his wife received 1/3 interest in his estate and each of six children received 1/9 interest. Anita was married to Jesse Hildreth, W.H. Hildreth's son. Jesse died in 1990 and Anita was his sole beneficiary. Anita died in August 2012; Appellant was her sole beneficiary. In the counterclaim, Appellant sought a declaration that the Hildreth heirs retain a 1/2 interest in the oil, gas, and other minerals, excluding coal, in the subject parcel, and Appellant obtains a 1/6 interest in the 1/2 interest. 6/12/13 First Amended Answer and Counterclaim.

{¶18} Appellee filed an answer to the counterclaim and moved for default judgment against the remaining unknown heirs or assigns of W.H. Hildreth. 7/3/13 Reply to Amended Answer and Counterclaim; 8/8/13 Motion for Default Judgment. The trial court granted a partial default judgment and indicated the action would proceed solely against Appellant. 8/20/13 J.E.

{¶9} Appellee then filed its motion for summary judgment. 1/24/14 Appellee Summary Judgment Motion. Appellant responded to this motion, but did not file her own motion for summary judgment. 2/13/14 Response to Appellee Summary Judgment Motion. For purposes of this appeal, the parties' arguments in the motion and response concerned which version of the ODMA was applicable. Appellee asserted the 1989 version was applicable; Appellant contended the 2006 version of the act was applicable.

{¶10} Relying on our holding in *Swartz v. Household*, 7th Dist. Nos. 13 JE 24 and 13 JE 25, 2014-Ohio-2359 and *Walker v. Noon*, 7th Dist. No. 13 NO 402, 2014-Ohio-1499, the trial court held the 1989 version of the ODMA was self-executing, there was no savings event, and the oil, gas and other mineral rights were abandoned. It further held the 2006 version of the act did not retroactively divest the surface owners of the oil, gas and other mineral rights acquired through the automatic operation of the 1989 ODMA. Thus, the trial court granted summary judgment for Appellee. It found Appellee was the owner of the real property and the oil, gas and other mineral rights underlying that property; Appellant did not hold interest in the real property or the oil, gas, and other mineral rights. Thus, the trial court granted Appellee's summary judgment motion and denied Appellant's counterclaim. 8/25/14 J.E.

{¶11} Appellant timely appealed the grant of summary judgment. The appeal was held in abeyance until the Ohio Supreme Court decided *Corban*. 11/17/14 J.E.; 10/17/16 J.E. Following the *Corban* decision, Appellant filed her brief and Appellee filed a "Notice of Consent to Remand to the Trial Court." 11/14/16 Brief; 11/15/16 Notice. Appellee agreed the matter should be remanded to the trial court so it could comply with the *Corban* decision.

*First Assignment of Error - ODMA*

{¶12} Appellant's first assignment of error provides:

"The trial court erred in granting summary judgment denying Appellant's mineral interest in Appellee's Real Property in a quiet title action relying on the Ohio

Dormant Minerals Act, R.C. 5301.56 as originally enacted, rather than as amended in 2006.”

{¶13} This assignment of error addresses the trial court’s application of the 1989 version of the ODMA, its determination that the 1989 version was self-executing, and its decision to not apply the 2006 version of the ODMA.

{¶14} Recently, the Ohio Supreme Court in *Corban* explained the application of the 1989 version of the ODMA and the application of the 2006 version of the ODMA:

The 1989 Dormant Mineral Act was not self-executing and did not automatically transfer ownership of dormant mineral rights by operation of law; rather, the surface holder was required to bring a quiet title action seeking a decree that the mineral rights had been abandoned in order to merge those rights into the surface estate.

The 2006 amendment to the Dormant Mineral Act applies to claims asserted after its effective date and specifies the procedure that a surface holder is required to follow in order to have dormant mineral rights deemed abandoned and merged with the surface estate.

*Corban v. Chesapeake Expl., L.L.C.*, \_\_ Ohio St.3d \_\_, 2016-Ohio-5796, \_\_ N.E.3d \_\_, ¶ 40-41. See also *Walker v. Shondrick-Nau*, \_\_ Ohio St.3d \_\_, 2016-Ohio-5793, \_\_ N.E.3d \_\_, ¶ 16.

{¶15} Application of *Corban* renders the trial court’s grant of summary judgment for Appellee incorrect. As explained above, the trial court relied on the 1989 version of the ODMA to find the mineral rights were abandoned. However, the 1989 version was not self-executing and is inapplicable to claims asserted after the 2006 ODMA’s effective date. *Corban*. The claims in this case were asserted in 2013, long after the effective date of the 2006 ODMA. Accordingly, in order to have the oil, gas and other mineral rights deemed abandoned and reunited with the surface, Appellee was required to follow the procedures set forth in the 2006 ODMA. Therefore, the trial court’s decision to grant summary judgment in Appellee’s favor

must be reversed and the matter remanded for further proceedings. This assignment of error has merit.

*Second Assignment of Error*  
*Summary Judgment Evidentiary Materials*

**{¶16}** Appellant's second assignment of error provides:

"The trial court erred in granting summary judgment on a motion that was unsupported by evidentiary material required under Civil Rule 56."

**{¶17}** Our resolution of the first assignment of error renders this assignment of error moot.

*Conclusion*

**{¶18}** The trial court's grant of summary judgment for Appellee is reversed and the matter is remanded for further proceedings under consideration of the *Corban* decision and its progeny.

Donofrio, J., concurs.

Waite, J., concurs.