

IN THE SUPREME COURT OF OHIO

JEFFREY H. SHARP, et al.

Plaintiff-Appellants,

v.

DAVID R. MILLER, et al.

Defendant-Appellees.

Case No. 2019-0036

On Appeal from the Jefferson County
Court of Appeals, Seventh Appellate District

Court of Appeals Case No. 17 JE 0022

MOTION FOR RECONSIDERATION OF JURISDICTION

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APPELLANTS' MOTION FOR RECONSIDERATION OF JURISDICTION

Pursuant to S.Ct. Prac. R. 18.02(B)(1), Appellants respectfully ask this Court to reconsider its April 17, 2019 decision not to accept their discretionary appeal. Appellants ask for reconsideration because the outcome of this case is a matter of great general and public interest to all Ohio mineral holders, public and private, whose minerals could be taken from them without due process of law if the Seventh District's holding is not overturned. The Seventh District held that a surface owner can steal another's minerals and then use the 2006 Ohio Dormant Mineral Act (the "DMA") to obtain lawful title. The Seventh District's holding must be overturned because it runs afoul of longstanding principles of statutory construction, binding precedent, and interferes with fundamental property rights.

The Ohio Generally Assembly enacted the Dormant Mineral Act "'to provide a method for the termination of dormant mineral interests and the vesting of their title in surface owners, in the absence of certain occurrences within the preceding 20 years.'" *Corban v. Chesapeake Exploration, L.L.C.*, 149 Ohio St. 3d 512, 2016-Ohio-5796, 76 N.E.3d 1089, ¶ 19. Under longstanding principles of statutory construction, when a statute is plain and unambiguous, a court's interpretation must be based on what the General Assembly has said. *State v. Gonzales*, 150 Ohio St. 3d 276, 2017-Ohio-777, 81 N.E.3d 419, ¶ 43 (Kennedy, J., dissenting). Courts must not insert words into a statute. *Id.* ¶ 4. However, the Seventh District did the opposite. It ignored the DMA's plain and unambiguous language, as set forth by General Assembly, and inserted words into the DMA. It held that minerals cannot be the "subject of" a title transaction unless there is a transfer of an ownership interest in the minerals. In so holding, the Seventh District failed to apply basic principles of statutory construction when interpreting R.C. 5301.56(B)(3)(a) and, by extension, R.C. 5301.47(F).

The Seventh District also ignored binding precedent. This Court already held that those sections are unambiguous, and “[i]f the General Assembly wanted to limit the qualifying title transactions to those transactions transferring title to ownership of land, it could have said so.” *Chesapeake Exploration, L.L.C. v. Buell*, 144 Ohio St.3d 490, 2015-Ohio-4551, 45 N.E.3d 185, ¶¶ 36, 39. Still, the Seventh District held otherwise.

If not overturned, the Seventh District’s decision could pave the way for the abandonment of coal interests, which is clearly and unambiguously prohibited by the DMA. R.C. 5301.56(B)(1). It could also pave the way for the abandonment of minerals held by the State of Ohio, which is also clearly and unambiguously prohibited by the DMA. R.C. 5301.56(B)(2). Its decision creates a slippery-slope. If the Seventh District can apply the DMA in contravention of its clear and unambiguous language, then so can all Ohio courts in all future cases. Consequently, the proper application of the DMA is a matter of great general and public interest to Ohio mineral holders, public and private.

The DMA is the only mechanism a surface owner can use to acquire severed minerals beneath its surface estate, other than actually purchasing the minerals. If incorrectly applied, the DMA divests mineral owners of their fundamental property rights without due process of law by allowing surface owners to steal mineral rights and use the DMA to acquire lawful title. The Seventh District’s holding sanctions the theft of minerals, undermines the rule of law, and must be overturned.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

In accordance with S.Ct.Prac.R. 3.11(C), I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was served via electronic mail on April 29, 2019 on the following:

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