IN THE SUPREME COURT OF OHIO

Harry A. Fonzi, III, *et al*., **Plaintiffs-Appellees,** **v.** **Allen B. Miller, *et al*.,** **Defendants-Appellants.**	**On Appeal from Monroe County Court of Appeals Seventh Appellate District** **Court of Appeals Case No.: 19 MO 0011**

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS, ALLEN B. MILLER, M. CRAIG MILLER, AND BRENDA THOMAS

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Table of Contents

I. THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Through a series of decisions the Seventh District has virtually "interpreted" R.C. 5301.56, the Dormant Mineral Act ("DMA"), out of existence. Its decisions have frustrated the purpose of the statute by making it almost impossible for Landowners to abandon mineral rights for their property, even when the interests have been stale, unused, and forgotten for generations.

First, in *Bayes v. Sylvester*, 7th Dist. Monroe No. 13 MO 0020, 2017-Ohio-4033, the Seventh District held that mineral interests could not be abandoned in a quiet title action under division (B), even if the requirements of division (E) had been satisfied and none of division (B)(1) through (3) applied. Mineral interests were treated as having been "preserved" in a quiet title action by the mere filing of a statement of intent to preserve,[1] even when it was undisputed that there were no occurrences under division (B)(3) ("Saving Events") in the 20 years immediately preceding the division (E)(1) notice.

Then, the Seventh District began to set aside and invalidate mineral abandonments that had been recorded when mineral holders had failed to file a statement of intent to preserve. In *Miller v. Mellott*, 2019-Ohio-504, 130 N.E.3d 1021 (7th Dist.), it held that a Landowner's division (E)(1) notice was invalid, even though it was undisputed that the notice contained all of the information required by division (F) and had been served on the mineral holders by certified mail, return receipt requested. The court also held that service by publication was a presumptively invalid manner of service. If, even years later, mineral holders merely alleged that the Landowner's efforts to locate their names and addresses for certified mail

[1] The Seventh District granted mineral holders even more leniency when filing their claims to preserve in *Paul v. Hannon*, 7th Dist. Carroll No. 15 CA 0908, 2017-Ohio-1261. There, it held that, even if a mineral holder's claim to preserve did not comply with the express requirements of the statute, it would treat such claim as valid and effective anyway under the doctrine of substantial compliance.

service were insufficient, the mineral abandonment should be declared invalid unless the Landowner proves otherwise.

A. The Seventh District is now invalidating mineral abandonments when Landowners fail to search for mineral holders in foreign states, even if such a search would not have enabled the Landowners to serve the division (E)(1) notice on the mineral holders by certified mail, return receipt requested.

In this case the Seventh District has gone even further. It held that the "reasonable" diligence that must be conducted prior to the publication of a division (E)(1) notice requires Landowners to search for mineral holders in foreign states and, by logical implication, perhaps even foreign countries. Decision, ¶36. Although the Seventh District denied that it was imposing a "whatever it takes" standard, it stated that if, at any point, Landowners fail to take the "next logical step" (Decision, ¶35) in continuing their search, their efforts will be deemed insufficient. This means that, if even years after the fact, mineral holders or their attorneys can conceive of <u>any</u> additional steps that might have been taken by the Landowners in attempting to find them, publication of the notice is improper and the abandonment must be declared invalid.

To make matters even worse, the Seventh District also held that it is <u>irrelevant</u> whether any of these additional search efforts would have been fruitful in enabling service of the notice by certified mail, return receipt requested. The court based this conclusion on what it called "the spirit of the law," which "clearly focuses on the reasonableness of the opposing party's search process." Decision, ¶28. Thus, the Seventh District held that the failure to take any additional steps in searching (such as in a foreign state) is considered "<u>per se</u> unreasonable" (emphasis added). Decision, ¶36.

B. The Seventh District has imposed an extreme burden on Ohio Landowners attempting to quiet title to their own land.

The Seventh District has refused to even consider whether mineral holders should have any duty to preserve their interests or to ensure that their current names and addresses can

be found within the county where the land is located. There is no concern in the decision below for the extreme burden that these new search requirements impose on Landowners. Severed mineral interests are sometimes held by more than 100 persons residing in more than a dozen different states across the country. The Seventh District's "reasonable search" requirement may easily cost Landowners more than $10,000. Under current Seventh District precedent, if a Landowner fails to take every available step in his search for each of the mineral holders, the publication of a division (E)(1) will invalidate the entire abandonment. And, if a single person receiving the notice decides to "preserve" the interest, he may do so on behalf of himself (and on behalf of all the other mineral holders, whether they want to preserve or not) by filing a statement of intent. This effectively transforms the DMA into a costly game of "Mother may I." Landowners are forced to pay what is to them a small fortune tracking down the names and addresses of the current holders of ancient mineral interests, and to provide them with what is effectively a courtesy notice, so that these long-lost holders can receive millions in royalties by simply recording a statement that they wish to retain the interests.

The Seventh District has misconstrued the DMA to the point that it no longer refers to the notice under division (E)(1) as a "notice." Instead, it refers to the notice as a "request" to abandon minerals. Decision, ¶28. And why not? Under its current interpretation of the statute, the Landowner's "request" for abandonment is granted only when all the mineral holders unanimously acquiesce in being divested of their rights after receipt of proper notice.

The Seventh District's extreme reluctance to recognize mineral abandonments is now so widely known that, in a bizarre twist, Landowners with property in the Seventh District have begun filing mineral abandonment lawsuits in counties located in other appellate districts. In *Peppertree Farms, LLC v. Thonen*, 5th Dist. Stark No. 2019CA00159, 2020-Ohio-

3042 and in *Peppertree Farms, LLC v. Thonen*, 5th Dist. Stark No. 2019CA00161, 2020-Ohio-3043, the trial court in Stark County was asked by the Landowner to determine the ownership of its land located in Monroe County. Based on the decision below, forum shopping like this will continue as desperate Landowners attempt to escape the jurisdiction of the Seventh District.

C. The Seventh District's misinterpretation of the DMA has improperly disincentivized Landowners from finding the mineral holders for whom they are required to look.

Recognizing that the search requirement under division (E)(1) of the DMA has become a matter of public and/or great general interest, this Court recently accepted *Gerrity v. Chervenak*, 5th Dist. Guernsey No. 18 CA 26, 2019-Ohio-2687 for review, Sup. Ct. Case No. 2019-1123. This Court's desire to provide some much-needed guidance in this area is certainly a welcome development. But the proposition of law in *Gerrity* does not get to the heart of the matter. The Seventh District has fundamentally misinterpreted the DMA and frustrated the purpose of the statute in a way that renders it internally inconsistent and, even worse, disincentivizes Landowners from finding those for whom they are looking. This Court's holding in *Gerrity*, whatever it may be, will at best treat the symptoms, but not the underlying cause, of the problem. The propositions of law presented in this case, including a mineral holder's current ability to unilaterally prevent an abandonment after the notice is served, even in a quiet title action under division (B), are therefore matters of public or great general interest.

II. STATEMENT OF CASE AND FACTS

Appellants own the land at issue in this case ("Property"). In a deed ("1952 Deed") dated July 17, 1952, Elizabeth Henthorn Fonzi transferred the Property to Everett W. Henthorn and Pearl W. Henthorn, but excepted and reserved one-third (1/3) of the oil and gas royalty ("Fonzi Royalty"). It is undisputed that, between 1952 and 2013, there were no title transactions or claims to preserve that were filed by anyone with respect to the Fonzi Royalty.

Although the 1952 Deed indicated that Elizabeth Henthorn Fonzi lived in Washington County, Pennsylvania, by 2013 this deed reference was approximately 60 years old and Elizbeth Henthorn Fonzi had divorced, remarried, changed her name, moved to Greene County, Pennsylvania, and died more than 20 years earlier with no estate having been filed. Appellees admitted in discovery that they did not even know about the Fonzi Royalty until 2017.

Appellants' former counsel, Kristopher Justice, was retained in 2011 in connection with the abandonment of the Fonzi Royalty. It is undisputed that Mr. Justice ran a complete and diligent search of all the land records in Monroe County and that Appellees' names and addresses were not disclosed in any of the land records.[2]

On November 17, 2011, December 1, 2011, and February 23, 2012, Appellants published a notice in the Monroe County Beacon indicating their intention to declare the Fonzi Royalty abandoned. Just as in *Gerrity*, it is undisputed that, in the 20 years immediately preceding service of the notice, none of division (B)(1) through (3) applied (no Saving Events had occurred). At least 30, but not later than 60 days after the date on which the notices were published, Appellants filed affidavits of abandonment with the Monroe County Recorder. Nobody filed anything in response to the published notices. Thus, Appellants caused the Monroe County Recorder to memorialize the record on which the Fonzi Royalty was based (the 1952 Deed) with a statement that the Fonzi Royalty had been abandoned. Upon the completion of the memorialization, Appellants became the record owners of the Fonzi Royalty.

Appellees filed the complaint in this action against Appellants more than five years later on May 12, 2017. The complaint alleged that Elizabeth Henthorn Fonzi was

[2] After completing his search in the courthouse, Mr. Justice did 15 to 30 minutes of internet research. Mr. Justice also checked whether there was any oil or gas production from the Property and for other occurrences under R.C. 5301.56(B)(3) ("Saving Events").

deceased, that Appellees were her sole heirs, and that they therefore succeeded to all of her rights in and to the Fonzi Royalty. Appellees' complaint alleged that Appellants did not perform adequate or reasonable due diligence under the DMA to ascertain the names and addresses of the holders of the Fonzi Royalty prior to publishing the division (E)(1) notice. They demanded a declaration that the abandonment was invalid, that they were the owners of the Fonzi Royalty, for an accounting of any rents and royalties paid to Appellants, and for judgment against Appellants for any royalties that were owed. On July 20, 2017, Appellants filed an answer and counterclaim. Appellants requested a declaration that the Fonzi Royalty had been cancelled under the DMA, that the interest be quieted in their names, and for other alternative relief.

On January 18, 2019, both sides filed motions for summary judgment. On April 25, 2019, the trial court issued a decision and judgment entry granting summary judgment in favor of Appellants. Appellees filed an appeal and on July 1, 2020, the Seventh District reversed the entry of summary judgment in favor of Appellants. Specifically, the Seventh District held that, because the original mineral holder lived in Washington County, Pennsylvania 68 years ago (back in 1952), it was unreasonable for Appellants to stop short of searching for the names and addresses of her successors and assigns in Pennsylvania, even if the evidence showed that such a search would not have enabled Appellants to serve the division (E) (1) notice on them by certified mail.

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

The legislature may enact any statute that is "rationally related to the legitimate state interest of simplifying land transactions." *Pinkney v. Southwick Invs., L.L.C.*, 8th Dist. Cuyahoga Nos. 85074 and 85075, 2005-Ohio-4167, ¶40 (quoting *Carlson v. Koch*, 8th Dist. Cuyahoga Nos. 36497 and 36498, 1978 Ohio App. LEXIS 9501 (Jan. 19, 1978)). The DMA was

enacted in 1989 "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 108, ¶19 (quoting 142 Ohio Laws, Part I, at 981). Division (B) of the 1989 DMA caused severed mineral interests to be deemed abandoned and vested in the Landowner in a quiet title action when there were no Saving Events in the previous 20-year period.

Under the 1989 DMA, a mineral holder could not prevent an abandonment by simply asserting an intent to preserve in a responsive pleading. As this Court recognized in *Corban*, in a quiet title action under the 1989 DMA "[p]roof of the basic fact [i.e., the lack of any Saving Events] is, in effect, conclusive evidence establishing the presumed fact [i.e., that the mineral interest has been abandoned]." *Corban*, ¶23. Mineral holders were also not entitled to any notice prior to the filing of a quiet title action under division (B). The absence of any prior notice, however, did not violate the due process clause. In *Texaco v. Short*, 454 U.S. 516, 102 S.Ct. 781 (1982), the U.S. Supreme Court held that the due process concerns for service of summons are not raised by dormant mineral statutes.

A. Proposition of Law No. 1: Sufficient service by publication of the R.C. 5301.56(E)(1) notice does not require a Landowner to determine that service by certified mail, return receipt requested, is impossible to complete by searching for the names and addresses of the mineral holders outside the land records of the county in which the land is located.

The Seventh District has taken a standard of conduct (reasonable diligence) that applies to the manner in which a search must be conducted under the DMA and used it to erroneously mandate that such search be extended to certain extra-territorial sources of information, without articulating any limiting principle. The search that must be conducted prior to publication of the division (E)(1) notice is not the same as for publication of a summon in a civil action seeking a personal judgment against a defendant. A proceeding under the DMA is *in*

rem, rather than *in personam*, because title to the mineral interest is the primary object of the action. The proceeding is directed toward property, rather than toward a particular person.

Because a proceeding under the DMA relates to an interest in land, the names and addresses of the mineral holders should be available in the land records of the county where the land is located. It is the mineral holders' responsibility to ensure that their names and addresses are available and may be found when such records are searched. The search requirement for a Landowner is no different than it is for a county prosecutor when initiating a tax foreclosure action. In such an action, the prosecutor is not required to conduct an exhaustive search for the property owner on the internet or in records of other counties, other states, or other countries.[3]

Clear, objective search standards are needed in order to enable those engaged in land title transactions to evaluate the sufficiency of a search and to determine who has good title. Courts have recognized that when dealing with potential uncertainties in title to land, bright-line rules are generally preferable. *See Nusekabel v. Cincinnati Pub. Sch. Employees. Credit Union*, 125 Ohio App.3d 427, 435, 708 N.E.2d 1105 (1st Dist. 1997)("we believe that a bright-line rule is preferable when property is affected").

Despite this, the Seventh District has remained steadfast in its refusal to provide any clear guidelines for how searches for mineral holders should be conducted in future cases. Consistent with its prior decisions, the Seventh District stated in the decision below that whether a party's efforts constitute "due diligence" will "depend on the facts and circumstances of each individual case" and that "reasonable actions in one case may not be reasonable in another case." Decision, ¶25. So, it is impossible to know today whether a Landowner's search efforts will be

[3] Also, the search requirements under the DMA prior to service at a "last known address" should not be greater than the search requirements for service at a "last known address" in other provisions under the Revised Code, such as R.C. 169.03(D) and R.C. 3905.14(C)(1).

considered sufficient when they are eventually subjected to judicial review in the future. The only thing that the Seventh District's decision guarantees is that it will be perfectly willing to second guess every decision that the Landowner makes in the course of his search more than eight years after the fact. This frustrates the purpose of the statute by completely undermining anyone's ability to rely on the record chain of title when it shows that a division (E)(1) notice has been published. Every DMA abandonment involving publication must now be litigated.

B. Proposition of Law No. 2: In order to set aside the evidentiary bar in R.C. 5301.56(H)(2) that arises when the county recorder memorializes the record on which a mineral interest is based, the former holder of a mineral interest has the burden of establishing that service of the R.C. 5301.56(E)(1) notice was insufficient.

It is a fundamental principle of civil procedure that the party who asserts a claim carries the burden of proof. *See Burkhart Family Trust v. Antero Res. Corp.*, 2016-Ohio-4817, 68 N.E.3d 142, ¶ 13 (7th Dist.). Within the context of a summary judgment motion, the initial burden is on the moving party to demonstrate the absence of a genuine issue of material fact as to the essential elements of the case with evidence of the type listed in Civ.R. 56(C). *See Headley v. Ackerman*, 7th Dist. Monroe No. 16 MO 0010, 2017-Ohio-8030, ¶ 24 (citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996)).

Under division (H)(2), a mineral interest becomes vested in the Landowner "[i]mmediately after the county recorder memorializes the record." Once the interest is vested, the Landowner does not have an obligation to provide any further evidence of the basis of his title. At that point, the DMA says that a mineral holder becomes a "former holder." If a former holder wishes to challenge whether a mineral interest has been abandoned, the holder bears the burden of proof. This is especially true in a case such as this where the former holder is the plaintiff filing the action and requesting that the court grant relief as a matter of law. Putting the burden on the Landowner, even when the DMA abandonment has been completed of-record

more than eight years ago (in 2012), would render the abandonment presumptively invalid, which in turn would render the evidentiary bar in division (H)(2) completely meaningless.

C. Proposition of Law No. 3: A former holder cannot establish that service by publication of the R.C. 5301.56(E)(1) notice was insufficient without showing that, with additional efforts by the Landowner, service by certified mail, return receipt requested, would have been possible to complete.

In its decision below, the Seventh District held that its due diligence standard is "not end-result driven and does not require a researcher to prove that a specific search would have revealed the heirs." Decision, ¶27. The court felt that requiring former holders to actually prove that additional search efforts would have revealed the specific heirs was "contrary to the spirit of the law, which clearly focuses on the reasonableness of the opposing party's search process." Decision, ¶28.

The "spirit of the law," as it has been revealed to the Seventh District in this case, apparently has very little to do with the statute's actual text. The DMA does not include any variation of the words "reasonableness," "search," "due diligence," or "process." Yet, the Seventh District believes that the "spirit of the law … clearly focuses" upon these things. Decision, ¶28. In accordance with these unwritten standards, it reversed the judgment of the trial court. Thus, the Seventh District simultaneously requires Landowners to strictly comply with the mandates of its own judicially-crafted, case-by-case diligence standard (that it has refused to define) while, under the doctrine of substantial compliance, it excuses mineral holders for their failures to comply with the statute's express requirements for the preservation of interests under division (C). *See Paul v. Hannon*, 7th Dist. Carroll No. 15 CA 0908, 2017-Ohio-1261. This inconsistent approach elevates compliance with an unwritten process over considerations of substantial justice, but only with respect to the obligations of the Landowners.

Moreover, Civil Rule 61 states in relevant part that:

> no error or defect in any ruling or order or in anything done … by the court … is ground for … vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

See also In re Thompkins, 2nd Dist. Montgomery No. 2489, 2005-Ohio-7073, ¶16 (holding that had an attempt to serve a party "reached the point of futility at which service by publication is permitted, we would conclude that any error in having prematurely effected his service by publication would be harmless" (emphasis added)).

In this case, the trial court held that Appellants' search was reasonable and entered judgment in favor of Appellants. If the Seventh District disagreed that the search was reasonable, under Civil Rule 61 it should not have vacated or otherwise modified the judgment unless refusal to do so was inconsistent with substantial justice. If a search of the records in Pennsylvania would not have made a difference in whether the division (E)(1) notice could have been served by certified mail, publication would have been permitted anyway and substantial justice could not have compelled the Seventh District to reverse the trial court's judgment.

D. Proposition of Law No. 4: If a Landowner files an action to quiet title to a mineral interest under the DMA, such mineral interest is abandoned and vested in the Landowner if the requirements of R.C. 5301.56(E) are satisfied and none of R.C. 5301.56(B)(1) through (3) apply.

By enacting the 2006 amendment to the DMA, the General Assembly did not divest Landowners of a right to abandoned mineral interests that accrued prior to the effective date of H.B. 288. *Corban*, at ¶35. Instead, "it modified only the method and procedure by which the right is recognized and protected." *Id*. (emphasis added). Under this new procedure, the Landowner serves a notice of intent to abandon the mineral interest under division (E)(1) and then records an affidavit of abandonment under division (E)(2). The new procedure allows the

Landowner to obtain marketable record title to an abandoned mineral interest without having to resort to litigation when the mineral holder does not contest the facts constituting the abandonment. But, the legislature did not remove the Landowner's ability to file a quiet title action to have a mineral interest deemed abandoned under division (B) for lack of any Saving Events in the 20 years "immediately preceding" service of the division (E)(1) notice.

In *Bayes v. Sylvester*, 7th Dist. Monroe No. 13 MO 0020, 2017-Ohio-4033, the Seventh District catastrophically misapplied the DMA by allowing a claim to preserve, filed after service of the notice of intent to abandon, to prevent an abandonment under division (B) in a quiet title action, even if it was undisputed that there were no Saving Events within the 20 years immediately preceding service of the division (E)(1) notice.[4]

Since the Seventh District issued its decision in *Bayes*, an increasing number of appeals have suddenly focused on the sufficiency of the search prior to publication of a notice of intent to abandon. *See Gerrity*, *Shilts v. Beardmore*, 7th Dist. Monroe No. 16 MO 0003, 2018-Ohio-863, *Sharp v. Miller*, 2018-Ohio-4740, 114 N.E.3d 1285 (7th Dist.), *Soucik v. Gulfport Energy Corp.*, 7th Dist. Belmont No. 17 BE 0022, 2019-Ohio-491; *Miller v. Mellott*, 2019-Ohio-504, 130 N.E.3d 1021 (7th Dist.). This is not a coincidence. *Bayes* improperly transformed the new process in divisions (E) through (I) into a "last chance" for mineral holders to preserve their interest. This "last chance to preserve" did not exist in the previous version of the DMA and the legislature did not intend to create it when the law was amended in 2006.

[4] The rule in *Bayes* has been applied in a number of different cases, including *McAuley v. Brooker*, 7th Dist. Noble No. 17 NO 0445, 2017-Ohio-9222, *Darrah v. Baumberger*, 7th Dist. Monroe No. 15 MO 0002, 2017-Ohio-8025, *Soucik v. Gulfport Energy Corp.*, 7th Dist. Belmont No. 17 BE 0022, 2019-Ohio-491, and *Miller v. Mellott*, 2019-Ohio-504, 130 N.E.3d 1021 (7th Dist.). In 2018, the Fifth District adopted the rule expressed in *Bayes* in *Wendt v. Dickerson*, 2018-Ohio-1034, 108 N.E.3d 1174 (5th Dist.).

A "last chance to preserve" fundamentally transforms the operation of the statute. Since the outcome in most DMA cases simply depends on whether the mineral holder responds to the division (E)(1) notice, Landowners are incentivized to do a minimal search so that they can justify serving their notice by publication.[5] Every ounce of effort expended in searching beyond what is currently a vaguely defined legal minimum increases the likelihood that the mineral holders can instead be served by certified mail. Requiring Landowners to conduct a search, but disincentivizing them from doing a thorough job, is completely absurd.

These perverse disincentives were never supposed to exist in the statute. The DMA has two different ways in which a mineral interest may be abandoned under R.C. 5301.56. The first is under division (B) where it says that, if division (E) is satisfied and division (B)(1) through (3) do not apply, mineral interests "shall be deemed abandoned and vested in the owner of the surface." Per *Corban*, this provision constitutes an evidentiary rule that can only be asserted by the Landowner in a quiet title action. This method has been in existence since the law was first enacted in 1989. The second method of abandonment, which was added in 2006, is the 60-day non-judicial process set forth in divisions (E) to (I). It culminates with the filing of a notice under division (H)(2). Divisions (E) to (I) avoid the need to file a lawsuit when the mineral holder fails to respond. A claim to preserve filed after the notice has been served prevents an abandonment under the 60-day non-judicial process, but it does not prevent an abandonment in a quiet title action filed under division (B).

[5] Because of this dynamic, *Bayes* also created an ethical dilemma for counsel representing Landowners. An attorney has a duty to act in the best interest of his client. Although counsel for a Landowner is legally required to conduct a diligent search, any efforts by counsel to locate the mineral holders beyond what is minimally required hurts the interests of the client.

E. Proposition of Law No. 5: If a mineral holder is not prevented under R.C. 5301.56(H)(2) from presenting the record of a mineral interest in court as evidence against the owner of the surface of the lands formerly subject to the interest, insufficient service of the R.C. 5301.56(E)(1) notice on the mineral holder is harmless and irrelevant to whether a mineral interest has been abandoned under R.C. 5301.56(B) or (H)(2).

Before depriving a person of life, liberty, or property, due process requires both notice and an opportunity to be heard. *See In re Z.H.*, 2013-Ohio-3904, 995 N.E.2d 295, ¶14 (9th Dist.). If a person's rights are completely unaffected by his failure to timely respond to a notice, insufficient service of that notice is harmless.

When a mineral holder fails to timely respond after sufficient service of a division (E)(1) notice, he is legally bound by the abandonment of his rights in the mineral interest, even though nothing was ever filed in court. But, the Landowner's title to the mineral interest acquired under the DMA need not be based on sufficient service of the notice. If a Landowner can also establish in a quiet title action that a mineral interest has been abandoned under division (B) because there have been no Saving Events in the 20 years "immediately preceding" the division (E)(1) notice, insufficient service of the division (E)(1) notice is harmless to the mineral holder's rights.

Here, just as in *Gerrity*, it is undisputed that the division (E)(1) notice was served (although the parties contest whether service of the notice was sufficient). Just as in *Gerrity*, since it is undisputed that there have been no Saving Events in the 20 years immediately preceding the division (E)(1) notice, any questions regarding the sufficiency of service under division (E)(1) are moot. Unless a court rules that a mineral holder is barred under division (H)(2) of the DMA from asserting any claims or presenting any evidence in an action concerning title to a mineral interest, it is irrelevant whether service of the division (E)(1) notice is sufficient.

F. Proposition of Law No. 6: It is an abuse of discretion for a district court of appeals to deny a joint motion of the parties to stay a case when the joint motion is based on a pending Ohio Supreme Court appeal involving a novel proposition of law, the resolution of which may highly influence or even control the resolution of issues in the case.

In its decision below, the Seventh District denied the parties' joint request to stay the case pending the outcome of this Court's decision in *Gerrity*. Although the issues in this case are very similar to *Gerrity* (so similar, in fact, that both Appellants and Appellees herein filed amicus briefs in *Gerrity*), Judge Waite indicated at oral argument that the request was denied because waiting for this Court's decision would take too long.

The Seventh District's denial of the joint motion to stay undermines judicial economy. This Court has already accepted for review a number of mineral title cases in the last nine months. Many of these cases will directly affect other cases that are currently pending in the trial courts and the district courts of appeals. Charging ahead with an immediate decision will increase the number of appeals that will be filed in this Court. If the Seventh District had instead waited until the decision in *Gerrity* was announced, this appeal and any subsequent proceedings upon remand may not have been necessary.

Also, it is far more important for a district court of appeals to decide a case <u>on the merits</u> than it is to simply keep its docket moving. This Court is the highest authority on state law and all lower courts are required to follow its binding precedents. The Seventh District's indifference to this Court's decision in *Gerrity* implies an unfortunate indifference toward getting the decision right in this case. This indifference is even more puzzling given that neither side felt that the harm from a slight delay would outweigh the benefits of waiting.

IV. CONCLUSION

For all of the foregoing reasons, this is a matter of public or great general interest; this Court should therefore accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Memorandum in Support of Jurisdiction of Appellants, Allen B. Miller, M. Craig Miller, and Brenda Thomas** was served upon the following party by emailing same on this 15th day of July, 2020:

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