

**IN THE COURT OF COMMON PLEAS
HARRISON COUNTY, OHIO
GENERAL DIVISION**

FILED
14 JAN 14 PM 12:17
LESLIE J. BROWN
CLERK OF COURTS
HARRISON COUNTY, OHIO

M & H PARTNERSHIP
Plaintiff

Case No. CVH-2012-0059

VS.

WALTER VANCE HINES, ET AL.
Defendants

JUDGMENT ENTRY

This matter is before the Court on Plaintiff's Motion For Summary Judgment filed on March 26, 2013 and Defendant's Motion For Summary Judgment filed March 7, 2013.

The Court has also considered the parties' replies and surreplies to said Motions including that if Defendant Chesapeake Exploration, LLC. The Court further recognizes the factual stipulations of the parties filed with the Court on March 21, 2013.

This matter is before the Court on a Complaint To Quiet Title filed by Plaintiff. Plaintiff contends that they are the surface and mineral owners of the disputed property. They claim ownership of the surface rights to the property through purchase on April 7, 2006. This ownership issue is not in dispute.

Plaintiff claims ownership of the mineral interest of the property pursuant to O.R.C. §5301.56 Ohio's Dormant Mineral Act as it was written in the 1989 version.

Defendants' Hines family do not dispute Plaintiffs surface right ownership. Defendant's Hines family do dispute Plaintiffs claim to the property's mineral rights.

Defendants' Hines family claim that Dormant Mineral Act does not apply to divest them of their mineral interest in the property because qualifying transactions have occurred in the necessary time frame.

Defendants' Hines family further argues that if no qualifying transactions are deemed to have occurred the correct version of ORC §5301.56 is the 2006 version and under said statute they properly preserved their mineral interest.

An examination of the 1989, 2006 ODMA §5301.56 is necessary as well as a review of interpreting case law in resolving the dispute.

O.R.C. §5301.56 (1989 version)

The factors to which Courts must look to decide whether a mineral interest holder had displayed sufficient activity to preserve their rights over a 20 year period or whether the mineral interest had grown stale based upon a lack of activity or interest by the mineral rights holder:

- (i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;
- (ii) There has been actual production or withdrawal of minerals by the holder.
- (iii) The mineral interest has been used in underground gas storage operations by the holder;
- (iv) A drilling or mining permit has been issued to the holder.

- (v) A claim to preserve the interest has been filed in accordance with division (c) of this section.
- (vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

In the case at bar, items (ii), (iii), (iv), (vi) have conclusively not been completed by the mineral estate holder. Item (v) claim to preserve interest was not filed in the requisite time period.

Therefore, the item which is controlling pursuant to the 1989 act is item (i) whether the mineral interest has been subject of a title transaction that has been file or recorded in the office of the county recorder of the county in which the lands are located.

A brief discussion on transfers of interest is necessary

1. Surface Rights.

- A.) The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Selway Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.
- B.) Selway Coal Company passed the surface rights to Robert Fleagane on February 29, 1975.
- C.) Robert Fleagane to Shell Mining Company January 1, 1989.
- D.) Shell Mining to R & F Coal Company November 12, 1991.

E.) R & F Coal Company merger with Capstone Holding Company
February 9, 2000.

F.) Capstone Holding Company to Emanuel J. Miller Et Al. April 20,
2001.

G.) Capstone Holding Company to William and Judith Ledger August 6,
2001.

H.) Emanuel J. Miller Et Al to M & H Partnership April 7, 2006.

Deeds A, B, C, and D contain reservation clauses for oil and gas within the deed. Transaction E, F, G, and H did not recite the reservation. Thus the last title transaction noting the reservation of oil and gas on the surface property was November 12, 1991.

2. Oil and Gas Rights.

A. The surface rights were severed from the mineral rights by deed on June 1, 1961. The surface rights passed to Consolidation Coal Company with Vance and Eleanor Hines reserving the oil and gas rights.

B. A lease of the oil and gas rights was recorded from Walter v. Hines to Harry J. Iles on July 15, 1969.

C. An oil and gas lease from Walter Vance Hines, Richard Scott Hines and David Chris Hines and Richard Scott Hines as Power of Attorney for Drue Anne Hines Danz to Chesapeake Exploration L.L.C. dated October 31, 2011 and recorded February 14, 2012.

The Seventh District Court of Appeals in *Dodd v. Croskey* Case No. 12 HA 6 Ohio App. 7th Dist (2013) ruled on what constitutes and whether or not a mineral interest has been the “subject of” a title transaction which has been filed or recorded in the office of the county recorder of the county in which the land are located.

The Seventh District held that “The common definition of the word “subject” is, topic of interest, primary theme or basis for action. Under this definition the mineral interests are not the subject of the title transaction.

In the case at bar, the Court finds pursuant to the *Dodd* decision *supra*, that the last title transaction that the mineral interests were subject of occurred July 15, 1969. Wherefore, under the 1989 Dormant Mineral Act the Court must decide whether the 1969 transaction was a savings event.

The effect of the 1969 transaction relies on interpretation of the statute and its 20 year look back period.

Riddell v. Layman 5th Dist. App. (1995 WL 498812) is the only appellate decision which touches upon the appropriate 20 year look back period for the 1989 Dormant Mineral Act. The *Riddell* Court decided that “the title transaction must have occurred within the proceeding twenty years from the enactment of the statute, which occurred on March 22, 1989. Appellee Layman recorded the deed on June 12, 1973, was within the preceding twenty years from the date the statute was enacted.”

The Riddel case dealt with a 1994 complaint and a 1973 reservation. Wherefore, the Court specifically finds that a rolling 20 year period of look back is not authorized by the 1989 statute. The Court finds that the 20 year period for a look back is 20 years from enactment March 22, 1989. Wherefore, a title transaction that the mineral interest is subject of must have occurred on or after March 22, 1969 to serve as a savings event.

The Court finds that Walter Vance Hine's lease of mineral interest to Harry J. Isles on July 15, 1969 is a title transaction and that the mineral interest at issue in this matter were the subject of that title transaction. As such, the July 15, 1969 lease serves as a savings event pursuant to the 1989 dormant mineral act and the holding in Riddel Supra.

2006 Dormant Mineral Act.

In 2006, the Ohio legislature amended the dormant mineral act and provided additional due process safeguards to mineral interest holders.

The additional steps germane to this case are:

- 1) Recording of an affidavit of abandonment §5301.56 (E)(2).
- 2) Holder may file a claim to preserve mineral interests within 60 days of notice of affidavit of abandonment §5301.56 (H)(1).

In the case at bar, Defendant promptly filed their claim to preserve mineral interest within the 60 day time limit.

Plaintiff's further claim that answering Defendant's do not have standing in this matter in that they are not the successors in interest to the original holder's

of mineral interest Vance and Eleanor Hines. The Court finds that Plaintiff's argument to be without merit. The Court finds that through Ohio's Law of Succession that the mineral interest herein passed from Vance Hines and Eleanor Hines and then to their only heir their son Walter Vane Hines and then from Walter Vance Hines to his children the Defendant's herein. The Court specifically finds Defendant's to be the lineal descendants of the original holders and the successors in interest to the original holders mineral interest.

The Court finds pursuant to both the 1989 and 2006 Dormant Mineral Act the Defendants have preserved their mineral interest. Under 1989 Act, the Court finds the July 15, 1969 lease of minerals from Walter Vance Hines occurred within the statutory look back period as defined in Riddel and as such was a savings event under the statute. Under the 2006 Act, the Court finds that Defendant's properly preserved their mineral rights by filing a notice of preservation with the county recorder.

The Court finds the 2006 law is the applicable law in the case. In *Dodd v. Croskey* Seventh Dist App (2013) 12 HA 6 (9/12/2013) the Court applied the 2006 law in determining the parties claim. The claim involved a 1947 oil and gas reservation with no further title transactions that the mineral interest were subject.

The Court did not address its choice of the 2006 Act over the 1989 Act in *Dodd*. However, it is clear from their decision that the 2006 law was applied.

This Court is convinced that applying the 2006 law is the appropriate statute in this case for the following reasons.

R.C. 5301.56 is part of the Marketable Title Act. The Marketable Title Act is ORC 5301.47 – 5301.56. The act is to be read in total and not as separate independent statutes. The purpose of the act is to establish a marketable chain of title. ORC 5301.55 liberal construction “Sections 5301.47 to 5301.56 so inclusive, of the Ohio Revised Code shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transaction by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Ohio Revised Code, subject only to such limitations as appear in Section 5301.49 of the Ohio Revised Code”.

The application of an “automatic” vesting clause of the 1989 Dormant Mineral Act is contrary to simplifying and facilitating land title transaction by allowing persons to rely on a record chain of title.

This Court does not believe it was the legislative intent at enactment to make surface holders automatically vested in the mineral rights pursuant to the 1989 Dormant Mineral Act. The terms automatic vesting, terminated, null and void, or extinguished were not used in the statute.

Those terms null and void and extinguished are used in other parts of the marketable title act but the Dormant Mineral Act uses the term abandoned.

The Court does not believe the difference in language to be unconscious. The Court finds pursuant to the Marketable Title Act that Plaintiff at the minimum must have filed a quiet title action prior to 2006 to have the 1989 law apply. Absent such action and determination, notice of the reversion of mineral

interest would not be apparent in the record chain of title and thus violate the purpose of the Marketable Title Act.

Since in this matter no action was filed until 2012, Plaintiff must conform to the applicable law currently in place to perfect their abandonment claim. And such the 2006 Dormant Mineral Act is controlling.

The Court finds this ruling is not in conflict with *Texaco v. Short* 454 U.S. 516 (1982) *Texaco v. Short* required due process before title vested in the surface holder. In the case at bar, Defendant Hines family was not given any due process consideration prior to this suit. There is no evidence of a Quiet Title Action filed between 1989 and 2006. In order for the Plaintiff's interest to vest some court action or recording of said interest must have occurred. Plaintiff failed to assert its claim prior to 2006 as such Plaintiff interest did not vest prior to 2006 and is subject to the 2006 amended statute.

WHEREFORE, it is the ORDER of the Court that:

Plaintiff's Motion For Summary Judgment is denied.

Defendants, Hines Family, Motion For Summary Judgment is granted.

Defendants, Hines Family, is the lawful owner of the oil and gas interest at issue in this matter. Plaintiff's claim of ownership fails under the 1989 and 2006 Dormant Mineral Act. The Court holds the 2006 Dormant Mineral Act to be controlling.

SO ORDERED.



T. Shawn Herve, Judge

NOTICE: FINAL APPEALABLE ORDER

This is a final appealable order. For each party who is not in default, serve notice to the attorney for each party and to each party who represents himself or herself by regular mail service with certificate of mailing making notation of same upon case docket.



T. Shawn Hervey, Judge

Stamped Copies:

Attorney Patrick E. Noser
✓ Attorney T. Owen Beetham
Attorney Clay K. Kellar