

**IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO**

BELMONT CO., OHIO

MARK E. ALBANESE Executor of the
Estate of JAMES F. ALBANESE, III

Plaintiff

v.

NILE E. BATMAN, et al.

Defendants

Case No. 12 CV 0044

FILED
MAY 28 PM 1 51

CYNTHIA K. MOORE
CLERK OF COURT

JUDGMENT ENTRY

This matter having come on before this Court upon Plaintiff Mark E. Albanese Executor of the Estate of James F. Albanese, III's Motion For Summary Judgment having been filed with this Court on March 24, 2014 and Defendants Hess Ohio Developments, LLC and Hess Ohio Resources, LLC's Motion For Summary Judgment filed with this Court on March 24, 2014. Thereafter, Responses and Replies were filed regarding the same. After having reviewed said filings this Court makes the following ruling.

STATEMENT OF FACTS

The Plaintiff is the surface owner of approximately 104 acres in Smith Township, Belmont County, Ohio. The Defendants Nile E. Batman and Katheryn K. Batman claim an interest in the mineral rights based upon a reservation of one-fourth (1/4) of all the oil and gas in a deed from a predecessor in title being John Clark, with said deed dated April 4, 1905 and recorded May 8, 1905 at Volume 155, Page 353 in the records of the

Belmont County Recorder. The Plaintiff claims that the Defendants have abandoned their interest in the oil and gas based upon their failure to comply with the requirements of the Ohio Dormant Mineral Act (ODMA). The Plaintiff signed a lease with Defendant Hess Ohio Developments, LLC on December 12, 2011. The Defendants signed a lease with Mason Dixon Energy, Inc. on October 16, 2008 and filed for record on March 3, 2009 for one-fourth (¼) of the oil and gas underlying the parcel in question. Mason Dixon assigned to Marquette Exploration, LLC on April 7, 2009 and recorded at Volume 183 Page 533. Marquette Exploration, LLC changed its name to Hess Ohio Resources, LLC as portrayed by a Certificate of Amendment filed September 16, 2011 and recorded at Volume 284 Page 233 of the Belmont County Official Record. The Plaintiff has couched their argument within the 1989 version of the ODMA and have not complied with the notice requirements of the 2006 version of the Act. Therefore, this Court shall conduct its analysis of the issues herein in light of the 1989 version of the ODMA.

STANDARD OF REVIEW

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when “it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” Ohio Rule of Civil Procedure 56(c).

Pursuant to Temple v. Wean United Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d

267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

1989 OHIO DORMANT MINERAL ACT

The 1989 version of the ODMA became effective March 22, 1989. It provided for a twenty (20) year look back provision regarding abandonment of mineral interests and a three year grace period through March 22, 1992 to come into compliance with the Act.

Ohio Rev. Code Section 5301.56 (B)(1), (B)(1)(c)(i), (v) provides in pertinent part:

(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface if none of the following applies:

(c) Within the preceding twenty years, one or more of the following has occurred;

(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;

* * *

(v) A claim to preserve the interest has been filed in accordance with division (C) of this section [.]

There are a number of other savings events that are not relevant to our discussions in the case at bar. The Plaintiffs claim that the Defendant Batmans have abandoned their mineral interest and that there have not been savings events upon which the Batmans can rely.

THE BATMAN AFFIDAVIT

In analyzing the twenty (20) year look back period from March 22, 1989, this Court must review the Batman Affidavit of Preservation recorded September 14, 1981. The Batman Affidavit was filed within the twenty (20) year look back window of the ODMA. This Court finds that the language contained in the affidavit complies with the requirements of Ohio Rev. Code Section 5301.52. As such, it qualifies as a savings event pursuant to the 1989 ODMA. Should the 1989 ODMA relate only to the years 1969-1989 plus the three year grace period, the Batman Affidavit would be sufficient to preclude abandonment by the Defendant Batmans. Whether the 1989 ODMA is static or rolling requires further analysis.

THE TWENTY YEAR WINDOW

Ohio Rev. Code Section 5301.56 (D)(1) provides:

A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(c) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

A static twenty (20) year look back period would have no need for a provision calling for indefinite preservation of mineral interest through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Dormant Mineral Act to provide for a “rolling look back period.” Also see Shannon v. Householder 12 CV 226 Jefferson County Common Pleas, July 17, 2013.

This Court finds this determination to be consistent with the comments set forth in the Ohio Legislative Service Commission Report relating to the 1989 Enactment of R.C.5301.56. The Commission therein stated:

Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances **within each preceding 20 year period.** (Emphasis added).

Ohio Legislative Service Commission, December, 1988, p.38.

Having so found, the Batmans are required to identify an additional savings event after the recording of their Affidavit to Preserve Interest on September 14, 1981 and before September 14, 2001.

THE BATMAN WILL

Frances Batman held a one-fourth (1/4) interest in the oil and gas in the parcel in question when she died in 1981. Her will was filed for record in County Court of Dakota County, Nebraska on October 21, 1981. Subsequently her will was filed for record with the Belmont County Probate Court on May 15, 1989. A certification from the Nebraska court was appended to the Batman Will prior to when it was filed with the Belmont County Probate Court. The will provided for the transfer of Frances Batman's interest in the parcel herein to her son, the Defendant Nile Batman. The Batman Will was recorded with the Belmont County Recorder on April 10, 1989, some nineteen (19) days after the 1989 ODMA went into effect. A Certificate of Transfer was not recorded in the office of the Belmont County Recorder.

It is the position of the Defendants that the Batman Will is a title transaction and acts as a savings event pursuant to the 1989 ODMA. Ohio Rev. Code 5301.47 (F) defines a title transaction as follows:

(F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

The failure to file the Certificate of Transfer does not negate the title transaction established by the filing of the Batman will with the Belmont County Recorder. The definition of title transaction provides for "any transaction affecting title to any interest in land including by will or descent..." See ORC 5301.47 (F). A number of other methods of transfer are listed "... tax deed, or by trustee's, assignee's, guardians, executor's, administrator's, or sheriff's deed..." Id. Certificates of Transfer are not listed in the definition of title transaction.

In Ohio Northern Univ. v. Ramga (July 12, 1990), 3rd Dist. App. No. 2-88-1, 1990 Ohio App LEXIS 2946 at *9, the Court of Appeals held that "title to real estate generally passes by testate succession at the time of death[.]" In the dissenting opinion of Ramga, Judge Whiteside discussed the application of a certificate of transfer in regard to a transfer of real estate through the Probate Court.

The certificate of transfer is provided by R.C. 2113.61(A) and is issued by the probate court, not as a document transferring the real estate but as a certification that the real estate has been transferred either by devise under a will or by statutory intestate succession. R.C. 2113.62 provides that such certificate of transfer may be recorded by the county recorder. The issuance of such certificate of transfer, however, is not a prerequisite to the transfer of title to the property, nor to the marketability or alienability of title to such real property. R.C. 2113.61 commences with the words, "[w]hen real estate passes * * * under a will * * * [" clearly connoting that the transfer itself was effected by admission of the will to probate and that the certificate is merely a

memorialization of such transfer which has previously occurred. Id at * 11-12.

The Second District Court of Appeals stated the following regarding the application of certificates of transfer.

Upon proper application, a probate court must issue a certificate of transfer for record in the county in which real estate is situated, which must recite the names of devisees and the interest in the parcel of real estate inherited by each. R.C. 2113.61. Though the certificate of transfer is not a conveyance, it does constitute a memorialization by probate court of what occurred with respect to a real estate title upon the death of the decedent.

Platt v. Estate of Petrosky (July 24, 1992), 2d Dist. App. No. 91-CA-105, 1992 Ohio App. LEXIS 3953, at *3.

In accordance with Ramga and Petrosky supra, the certificate of transfer is not the conveyance document but rather the will itself is the vehicle by which the inherited property is transferred. Wherefore, this Court finds the Batman Will, recorded on April 10, 1989, to be a title transaction and savings event pursuant to the 1989 ODMA and in accordance with the spirit of the law which essentially calls for one to “use it or lose it.”

THE BATMAN LEASE

When applying the “rolling look back period,” in order for the Batmans to avoid abandonment of their mineral interests pursuant to the 1989 ODMA, they must be able to rely on a savings event prior to April 10, 2009. The Defendant Batmans, on October 16, 2008, entered into a lease with Mason Dixon Energy, Inc. The same was recorded with the Belmont County Recorder on March 3, 2009. The Ohio Supreme Court has held that

an oil and gas lease is “more than a mere license,” it conveys “a vested, though limited, estate in the lands for the purposes named in the lease.” Harris v. Ohio Oil Co. (1897), 57 Ohio St. 118, 130.

An oil and gas lease is a “title transaction” pursuant to Ohio Rev. Code 5301.47 (F). “The transaction must merely ‘affect’ the interest. Clearly, an oil and gas lease is an instrument which affects an interest in such minerals.” Bender v. Morgan Columbiana Co. C.P. Case No. 2012-CV-387, at 4.

The Batman oil and gas lease recorded on March 3, 2009 fulfills the requirements of the 1989 ODMA.

CONCLUSION

After having considered Plaintiff Mark E. Albanese Executor of the Estate of James F. Albanese III’s Motion For Summary Judgment and Defendants Hess Ohio Developments, LLC and Hess Ohio Resources, LLC’s Motion For Summary Judgment and after construing the evidence most strongly in favor of the nonmoving parties and having determined that there is no genuine issue as to any material fact and that reasonable minds can come to but one conclusion and further that there is no just reason for delay, this Court makes the following ruling.

This Court finds that Hess Ohio Developments, LLC and Hess Ohio Resources, LLC are entitled to judgment herein. This Court grants the Motion For Summary Judgment of Hess Ohio Developments, LLC and Hess Ohio Resources, LLC. This Court denies the Motion For Summary Judgment of Plaintiff Mark E. Albanese Executor of the

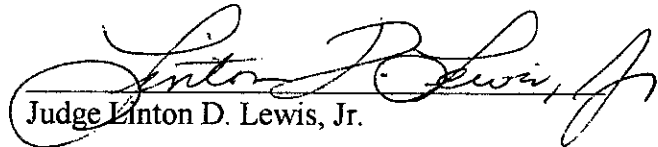
Estate of James F. Albanese, III. Plaintiff's Complaint is hereby dismissed with prejudice. Costs shall be assessed to the Plaintiff herein. This is a final appealable order.

IT IS SO ORDERED.

ENDED

CLERK SERVED COPIES ON
ALL THE PARTIES OR
THEIR ATTORNEYS

VENUS


Judge Linton D. Lewis, Jr.

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

✓