

IMPORTANT RULINGS FROM OHIO SUPREME COURT IN KEY MINERAL RIGHTS CASES EXPECTED SOON



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The Ohio Supreme Court will soon issue opinions in two oil and gas cases currently pending before it: *West v. Bode*, Case No. 2019-1494 and *Gerrity v. Chervenak*, Case No. 2019-1123. Rulings in these cases could potentially alter the legal landscape in Ohio in the ongoing legal battles between surface owners and severed mineral owners over valuable oil and gas shale rights.

These cases deal with two Ohio statutes that govern the preservation and termination of severed mineral rights: The Marketable Title Act (“MTA”) and the Dormant Mineral Act (“DMA”). In general, the MTA calls for an automatic extinguishment of property interests created prior to a surface owner’s chain of title to property, if the surface owner has an unbroken chain of title

for more than 40 years after the prior property interest was created and there are no specific references to the prior interest in the surface owner’s chain of title. On the other hand, under the DMA, if no “savings events” apply to the mineral interest, a surface owner who follows the mandatory notice procedure and other requirements in the DMA may have dormant mineral interests deemed abandoned. The DMA also allows mineral holder to preserve their interest from being abandoned, and, significantly, allows for one mineral owner to preserve as to all mineral owners.

In *West v. Bode*, the Ohio Supreme Court will decide a single question: Whether a surface owner may utilize the MTA to quiet title severed mineral interests or whether the DMA provides the exclusive remedy.

Rulings continued on page 14



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The primary issue before the Court in *West v. Bode* is whether the MTA irreconcilably conflicts with the DMA. Under Ohio law, when two statutes are in conflict and if the conflict is irreconcilable, the more specific statute controls over the general statute.

If the Supreme Court rules that the MTA irreconcilably conflicts with the DMA, and therefore cannot be used to extinguish severed mineral interests, surface owners will be left with few remedies to terminate severed mineral interests, primarily because, as stated above, the DMA allows mineral owners to perpetually preserve their mineral interests, thereby defeating surface owner abandonment attempts. Conversely, if the Court rules in favor of the surface owner that the two statutes are *not* in conflict, surface owners may continue to utilize the MTA to attempt to extinguish severed mineral interests. Therefore, the impact of the ruling in *West v. Bode* will either result in a dramatic shift in law that would favor severed mineral interest owners or a preservation of the status quo and a continuation of the MTA tug of war.

A second key oil and gas case before the Ohio Supreme Court is *Gerrity v. Chervenak*, 2019-Ohio-2687. *Gerrity* is a DMA case in which the Court is being asked to decide what standard applies to surface owners' attempts to comply with the abandonment notice requirements of the DMA. This is an area of frequent dispute between surface owners and mineral owners in that the DMA requires that surface owners must attempt certified mail service before they can publish an abandonment notice in the county where the minerals are located in order to abandon minerals. Surface owners who cannot locate mineral owners often skip the required step of attempting certified mail service and

proceed directly to publication. Mineral owners frequently challenge this process and the issue becomes what level of "reasonable diligence" was exercised by the surface owners to attempt to locate the severed mineral owners. Thus, the question at issue in *Gerrity* is just how much diligence surface owners need to exercise in locating heirs of severed mineral owners in order to comply with the notice requirements of the DMA.

If the Court holds in favor of the surface owner, the diligence standard will likely be narrower—possibly limited to a public-records search in the county where the minerals are located—and it will be more difficult for mineral owners to challenge a surface owner's compliance with the DMA in court. However, a ruling in favor of the severed mineral owner could potentially lead to hundreds of abandonment notices previously filed across eastern Ohio held to be invalid for failure to comply with the DMA.

In sum, the Supreme Court of Ohio will be issuing rulings in *West v. Bode* and **Gerrity v. Chervenak** during this term of the Court, which concludes at the end of 2020. These cases highlight the continued uncertainties in Ohio in the area of mineral title litigation. This uncertainty, coupled with the need for litigation to clear title to minerals, highlights the importance of retaining an experienced oil and gas attorney who can advise clients with respect to the rights of surface owners and mineral owners as to severed mineral interests in Ohio.

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