Ohio Supreme Court Interprets the MTA to Preserve A Severed Mineral Interest

David J. Wigham | *Attorney*

On December 13, 2018, the Supreme Court of Ohio clarified the type of deed reference that would preserve a reserved oil and gas royalty interest from being extinguished under the Ohio Market Title Act (the "MTA") in *Blackstone v. Moore*, 2018-Ohio-4959. In an interesting concurring opinion, one justice of the Supreme Court, Justice Mary DeGenaro, cautioned that the court's decision should not be interpreted to hold that the MTA would apply to extinguish mineral interests, in light of the more specific provisions of Ohio's Dormant Mineral Act (the "DMA"). The issue raised by Justice DeGenaro is currently pending before her former court, the Seventh District Court of Appeals, in several cases led by *Stalder v. Bucher*, Case No. CA2017-017.

In general, the MTA automatically extinguishes property interests created prior to a landowner's chain of title to property, if the landowner 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 landowner's chain of title. The issue in Blackstone was whether the deed reference to the prior interest was sufficient to preserve the interest.

The royalty reservation at issue in *Blackstone* was originally created in 1915, when Nick Kuhn conveyed a 60-acre parcel to the Browns, and excepted a "one half interest in oil and gas royalty." Each subsequent deed transferring the property made reference to the Kuhn royalty interest. In 1969, Alfred Carpenter transferred the property to David Blackstone, and this deed also excepted the Kuhn royalty interest, without any citation to the volume or page number of the 1915 deed. On appeal, the Seventh District Court of Appeals held that the Kuhn royalty

Mineral continued on page 14

Mineral continued from page 13

interest had been preserved in the 1969 deed, and the Blackstones appealed to the Supreme Court of Ohio.

In its opinion, the Supreme Court analyzed the MTA and the question of whether the reference to the Kuhn royalty interest in the 1969 deed was specific enough to preserve the interest. The court concluded that because the 1969 deed reference identified the type of interest being reserved (a one-half royalty interest) and who originally reserved it (Nick Kuhn), there was no question that interest was preserved under the MTA.

In a separate concurring opinion, Justice DeGenaro emphasized that the *Blackstone* opinion "should not be read to implicitly hold that the more general Marketable Title Act continues to apply to mineral interests following the enactment of the Dormant Mineral Act, R.C. 5301.56—a more specific statute providing for the termination of those interests." *Blackstone*, at ¶ 19 Under Ohio law applicable to resolving conflicts between statutes, when two statutes are in conflict, the specific statute controls over the more general statute. In the context of the MTA and the DMA, Justice DeGenaro stated that the more specific DMA would apply to the preservation and termination of reserved mineral interests over the more general MTA, because the two statutes are in conflict.

The *Blackstone* case was closely followed because of a recent surge in MTA claims filed by surface owners seeking to terminate reserved mineral interests. Specifically, surface owners have been attempting to utilize the MTA to extinguish severed mineral interests, rather than relying on the 2006 DMA, which requires surface owners to first notify mineral owners before seeking an abandonment of their minerals, and also allows mineral owners to permanently preserve the interest.

Prior to September 15 2016, the date of the Supreme Court of Ohio's landmark ruling in *Corban v. Chesapeake Exploration, L.L.C.*, surface owners had been able to rely on the automatic abandonment provisions of the 1989 DMA, which allowed surface owners to abandon reserved mineral interests based on a showing that they were not actively used for a period of 20 years, and there was no need to pursue MTA claims. As a result of *Corban*, the 1989 DMA was no longer applicable to the abandonment of minerals, which in turn lead to the recent spate of MTA cases filed by surface owners seeking alternate ways to automatically eliminate severed mineral interests.

The problem is that the MTA and the 2006 DMA are arguably in conflict with each other. For example, on one hand, while the MTA allows for automatic extinguishment of prior mineral interests where there is no reference to the prior interest within the surface owner's 40-year chain of title, the 2006 DMA requires surface owners to give notice before seeking to abandon a mineral interest and also allows mineral owners to statutorily preserve the same interests. So mineral owners could face possible challenges to the validity of their interests—and potentially inconsistent results—under two different statutes.

In addition, there are several cases pending before the Seventh District Court of Appeals in which this very issue is in dispute; that is, whether the MTA is applicable to terminate reserved minerals interests or whether the more specific DMA applies. The leading case is *Stalder v. Bucher*, Seventh District Court of Appeals, Case No. CA2017-017. The *Stadler* case was briefed in early 2018, but an opinion has not been issued as of this writing. At the same time, several lower courts are issuing rulings that the DMA, and not the MTA, is the statute that controls the termination of reserved minerals, including the Monroe County Common Pleas Court.

To add another layer of intrigue, Justice DeGenaro served as a judge on the Seventh District Court of Appeals for 17 years before being appointed to the Supreme Court of Ohio in early 2018, to fill the seat vacated by the retirement of Justice William O'Neill. However, Justice DeGenaro was recently defeated in the November 2018 general election, and therefore is no longer on the Supreme Court. The Justice's concurring opinion in *Blackstone* is not binding, so it remains to be seen how the Seventh District rules in *Stalder v. Bucher*.

Regardless of how the court of appeals rules, scores of pending MTA cases involving mineral interests will be impacted. If the court rules that the MTA applies, then surface owners will have an additional basis to attempt to terminate reserved mineral interests covering their property. If the court rules that only the DMA applies, then surface owners will be limited to following the DMA when attempting to terminate mineral interests. Regardless of how the court rules, the opinion undoubtedly will be appealed to the Supreme Court of Ohio, where the issues will be decided without the involvement of Justice DeGenaro.

In short, even after the Supreme Court's ruling in the *Blackstone* case, surface owners and severed mineral owners in Ohio continue to face significant hurdles under the MTA and the DMA when seeking to terminate or preserve ownership of valuable mineral interests. There are several pending cases that will impact these interests. Ohio law in this area is in flux and is evolving seemingly every day. This uncertainty highlights the importance of retaining an experienced oil and gas attorney to advise clients with regard to the abandonment, preservation and the ownership of mineral interests.

David J. Wigham is a second-generation Ohio oil and gas attorney with more than 26 years of experience. He practices at the law firm of Roetzel & Andress and maintains offices in Akron and Wooster, Ohio. He can be reached at 330-762-7969, or dwigham@ralaw.com.