January 31, 2022

Ohio Appellate Court Further Clarifies 'Reasonable Diligence' Standard Under the Dormant Mineral Act

By David J. Wigham

On November 18, 2021, in another significant case involving surface owners who were attempting to abandon severed mineral interests under the Dormant Mineral Act, R.C. § 5301.56, et seq. ("DMA"), the Seventh District Court of Appeals issued its opinion in *Beckett v. Rozsa*, 2021-Ohio-4298. In a unanimous decision to reverse, the Court held that the surface owners failed to use reasonable diligence to locate all holders of severed mineral interests prior to serving their notice of abandonment by publication, when there was evidence in the public record containing out-of-state addresses of several mineral holders. As a result, the surface owners failed to comply with the DMA's notice requirements and ownership of the minerals was vested in the severed mineral holders.

As a matter of background, the *Beckett* case involved a fact pattern that is typical in many DMA cases. The property in question, located in Jefferson County, consisted of approximately 110 acres once owned by LeRoy Beckett and was inherited by his two children when Leroy died in 1966, with each child receiving a one-half interest in the property. Both children thereafter conveyed their interests in the property, reserving all of the oil and gas minerals underlying the premises. The property was eventually transferred to the surface owners. Thereafter, the surface owners published DMA notices of their intent to declare the Beckett oil and gas reservations abandoned in the local newspaper in September 2011. A lawsuit was filed by the mineral owners and their assigns (the Beckett heirs), and the trial court granted summary judgment in favor of the surface owners, declaring the Beckett heirs' mineral interest to be abandoned. From this ruling, the Becketts heirs appealed to the Seventh District Court of Appeals.

In reversing the trial court's judgment, the Court of Appeals cited to the recent Ohio Supreme Court opinion of *Gerrity v. Chervenak*, 2020-Ohio-6705, which held that a surface owner must exercise "reasonable diligence" when searching for mineral holders, and a surface owner's failure to use "reasonable diligence" precludes application of the DMA, thereby invaliding the surface owner's attempts to abandon the subject minerals.

Gerrity also provided important guidance that the starting point for determining who the surface owner must attempt to notify pursuant to the DMA is a search of the separate mineral chain of title. The Court instructed that "[i]n addition to property records in the county in which the land that is subject to the mineral interest is located, a reasonable search for holders of a severed mineral interest will generally also include a search of court records, including probate records, in that county." *Id.* at ¶ 35. Importantly, however, the Court went on to state that "[t]here may, however, be circumstances in which the surface owner's independent knowledge or information revealed by the surface owner's review of the public-property and court records would require the surface owner, in the exercise of reasonable diligence, to continue looking elsewhere to identify or locate a holder." *Id.*

Turning back to *Beckett*, applying *Gerrity*, the Court of Appeals observed that the surface owners search for the Beckett heirs "began and ended with the public records in Jefferson County," even though there were records in Jefferson County probate records contained addresses for LeRoy's son in Manchester, Connecticut and his daughter in Urbana Illinois. Based on this evidence, the Court held that the surface

owners' search for the Beckett heirs was unreasonable because "there was evidence in the Jefferson County probate records" that established where LeRoy's children lived, and the surface owners should have attempted to serve DMA abandonment notices on them at these addresses before published their notice of abandonment in the local newspaper.

The Court also emphasized that it was declining to adopt an "end-result over the process employed" test. Rather than examining what results a surface owners' search *would have* revealed, the Court emphasized it will examine "the information available to surface owners and the parameters of their search." In other words, the courts are not concerned about the search results, and whether mineral holders would have been located, but rather the scope of the search based on the public record information available in the county in which the minerals are located at the time the notice of abandonment was filed. Based on this test, it is entirely possible for a scenario to exist in which a court would conclude that there was not a diligent search where the surface owner failed to search out-of-state records based on the public record in the county where the minerals are located, even if there were no address records for the mineral holder in that out-of-state location. The test is not whether the mineral holder could have been located, but the scope of search employed.

Beckett v. Rosza illustrates the legal hurdles that surface owners and severed mineral owners in Ohio continue to face when seeking to abandon or preserve ownership of valuable reserved mineral interests.

Please contact any of the listed Roetzel attorneys for further information.

David J. Wigham
330.762.7969 | dwigham@ralaw.com

J. Benjamin Fraifogl
330.849.6651 | brfraifogl@ralaw.com

Emily Anglewicz
330.849.6687 | eanglewicz@ralaw.com

Jeremy D. Martin
330.849.6611 | jmartin@ralaw.com

Sara E. Fanning
614.463.9792 | sfanning@ralaw.com

Timothy B. Pettorini
330.762.7968 | tpettorini@ralaw.com