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Ohio Supreme Court Issues First Opinion Interpreting the Dormant Mineral Act

*By **Mike Traven***

A number of cases are currently pending before the Ohio Supreme Court addressing various issues relating to the Ohio Dormant Mineral Act, R.C. 5301.56 ("DMA"). In today's unanimous opinion, *Dodd v. Croskey*, Sl. Op. No. 2015-Ohio-2362, the Court held that the mineral-interest holder's filing of an affidavit of preservation was sufficient to prevent abandonment of the mineral interests. Interestingly, unlike a host of pending cases before the Ohio Supreme Court, this case dealt exclusively with the 2006 version of the DMA, and, thus, did not involve any arguments by the parties about the potential interplay and impact of the 1989 version of the DMA.

In *Dodd*, the surface owners of the property – the Dodds – published a notice of abandonment of mineral interests underlying their property in a local newspaper. Two days later, John William Crosky filed an "Affidavit Preserving Minerals," in the Harrison County Recorder's Office, identifying the basis for his (and 36 other persons') claim to the mineral interests. The Affidavit did not, however, identify any purported savings events that might preclude abandonment under the DMA. The Dodds filed a declaratory-judgment action to quiet title, claiming that the Crosky Affidavit did not prevent the minerals from being deemed abandoned under the DMA because the affidavit was filed after the Dodds had published the notice of abandonment. The Ohio Supreme Court rejected this argument, and held that the Crosky Affidavit sufficiently preserved the mineral interests pursuant to the DMA.

Under the 2006 version of the DMA, in order for a surface owner to vest the mineral interests into his surface interests, he must follow a two-step process: (1) the surface owner must serve or publish notice of the intent to declare the mineral interests abandoned, *see* R.C. 5301.56(E)(1); and (2) between 30 and 60 days after the notice is served, the surface owner must file and record an affidavit of abandonment that includes the statutorily-required substance. *See* R.C. 5301.56(E)(2) and (G). In response, in order to prevent abandonment, the mineral-interest holder, within 60 days after the filing of the notice of the intent to declare the mineral interests abandoned, must file in the county recorder's office one of two documents: (1) a claim to preserve the mineral interests; or (2) an affidavit that identifies a statutory "savings event" that occurred within the 20 years preceding the date on which the notice was filed by the surface owner. *See* R.C. 5301.56(H)(1). In this case, there was no dispute that the Crosky Affidavit did not meet the requirements of the affidavit identifying a savings event, because it did not identify any savings events. Thus, the issue in the case was whether the Crosky Affidavit constituted a claim to preserve the mineral interests, even though it was recorded after the notice of intent was published by the surface owner. The Ohio Supreme Court held:

> Reading the statute as a whole, we conclude that the plain language of the Dormant Mineral Act permits a mineral-interest holder's claim to preserve to serve two separate but similar functions depending on when it is filed for record: one as a saving event under R.C. 5301.56(B)(3)(e) when filed in the 20 years preceding notice and another to preclude the mineral interest from being deemed abandoned under R.C. 5301.56(H)(1)(a) when filed within 60 days after service of the surface owner's notice. Nothing in the act states that a claim to preserve filed under R.C. 5301.56(H)(1)(a) must refer to a saving event that occurred within the preceding 20 years. Nor do the notice procedures in R.C. 5301.56(H)(1)(a) require that the claim to preserve be itself filed in the 20 years preceding notice by the surface owner. The statute plainly states that such a claim can be filed within 60 days after notice. R.C. 5301.56(H). Thus, to preserve the mineral holder's interests, the plain language of R.C. 5301.56(H) permits either a claim to preserve the mineral interest or an affidavit that identifies a saving event that occurred within the 20 years preceding notice.

> Here, there is no question that Croskey did not file his affidavit in the 20 years preceding appellants' notice of intent to declare the mineral interests abandoned. And although the Croskey affidavit was styled as an affidavit, it did not meet the requirements in R.C. 5301.56(H)(1)(b) because it did not identify a saving event in the 20 years preceding notice.
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> The issue, then, is whether the affidavit qualified as a claim to preserve the mineral interests from being deemed abandoned. In form and substance, the Croskey affidavit satisfied the requirements for a claim to preserve under R.C. 5301.56(C), including that it be in the form of an affidavit pursuant to R.C. 5301.52. And because it was filed within 60 days after appellants' notice, it satisfied R.C. 5301.56(H)(1)(a) to preserve the mineral interests.

Dodd, 2015-Ohio-2362, ¶¶ 30-32.

The filing of this opinion could serve as an indication that the Ohio Supreme Court may be close to filing opinions in the other fully briefed and argued cases dealing with the DMA.

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