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Ohio Supreme Court Provides Guidance on Key Marketable Title Act Issue Regarding Preservation of Severed Mineral Interests

By David J. Wigham

On March 16, 2021, the Supreme Court of Ohio issued another important opinion in the ongoing tug of war between surface landowners and severed mineral owners over the ownership of valuable mineral rights in Ohio. In *Erickson v. Morrison*, Slip Opinion No. 2021-Ohio-746, the Supreme Court unanimously reversed a Fifth District Court of Appeals decision and ruled that references in a surface owner's chain of title to an identifiable oil and gas reservation – even if they fail to include the name of the party who severed the interest – are "sufficiently specific" to preserve the interest from being extinguished under the Marketable Title Act, R.C. 5301.47, *et seq*. (the "MTA").

In recent years, the MTA had seemingly become a useful tool for surface owners seeking to reclaim ownership of severed mineral interests. Generally, absent one of the statutory exceptions, the Act permits the automatic extinguishment of severed mineral interests created prior to a surface owner's root of title to the property if the surface owner has an unbroken chain of title for more than 40 years after the prior mineral interest was created and there are no specific references to the prior interest in the surface owner's chain of title. If, however, a specific reference to the prior mineral interest appears in the surface owner's chain of title, then those references are deemed sufficient to preserve the prior interest.

In the recent case of *Blackstone v. Moore*, 2018-Ohio-4959, the Ohio Supreme Court created a three-part test to determine whether an interest was preserved and went on to hold that a reference within the 40-year chain that included the name of the severed mineral owner was sufficiently specific and therefore preserved. Based on this holding, some surface owners successfully argued in Ohio appellate courts that *Blackstone* required a name and that without a name, the interest was extinguished. This set the stage for *Erickson v. Morrison*, where the Ohio Supreme Court was called upon to definitely rule whether the name of the reserving party was required to identify the prior mineral interest or whether a description of the interest itself (for example, "excepting and reserving all oil and gas and the right to remove the same") was specific enough to preserve the interest.

In holding that a reference to a prior mineral interest need not include the name of the severed interest holder, the Court looked to the statutory language of the MTA and noted that there was nothing in the statute that required the name of the reserved interest owner to preserve it. The Court also looked to R.C. 5301.49(A), the section of the MTA that spells out the instances occurring with the 40-year chain that preserve prior interests from being extinguished and observed that it serves an important function to "protect the interests that predate the root of title," citing to Blackstone. The Court also cited to an earlier MTA case, *Toth v. Berks Title Ins. Co.*, 6 Ohio St.3d 338 (1983), which held that an interest that is referenced specifically in a subsequent reservation is not extinguished by the MTA. Finally, the Court examined the statutory history of the MTA, noting that while the General Assembly amended certain requirements of the MTA to include the owner's name, it did *not* amend R.C. 5301.49(A) to require that a reference in the muniments contain a name to preserve it from being extinguished.

Turning to the facts of the *Erickson* case, the Court noted that each of the title conveyances in the surface owner's chain of title recited that the transfer was subject to a specific reservation of oil and gas rights. Rather than being general, the root of title deed and several subsequent conveyances described a specific reservation of mineral rights, stating "Excepting and reserving therefrom all coal, gas, and oil with the right of said first parties, their heirs and assigns, at any time to drill and operate for oil and gas and to mine all coal." Because this reference was repeated throughout the surface owner's chain of title, the Court ruled that it was a specific reference and therefore preserved from being extinguished under the MTA, even though it did not contain the name of the reserving party.

Although the Supreme Court's ruling may seem rather innocuous, its legal effect is sweeping. Many Ohio surface owners were filing lawsuits seeking to extinguish severed mineral interests where the name of the reserving party did not appear in the 40-year chain of title. Had the Court ruled that a name *was* required in subsequent references for a severed mineral interest to be considered specific, these severed mineral interests would likely have been deemed extinguished under the MTA and surface owners would have acquired those mineral rights. In the wake of the *Erickson* decision, those interests will likely stay vested in the mineral holder.

As a result of this ruling, the landscape in the ongoing legal battle over valuable mineral rights has shifted once again, in that now there are more limited circumstances in which surface owners can avail themselves of MTA remedies, and many more circumstances in which mineral interests will be preserved across the state. Cases like *Erickson v. Morrison* also highlight the fact that mineral title law in Ohio is still evolving and further underscore the importance of retaining an experienced oil and gas attorney to advise clients regarding the extinguishment, preservation and ownership of severed mineral interests.

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