

What is “Reasonable Diligence” Under the DMA? The Ohio Supreme Court Offers More Guidance to Landowners

By Sara E. Fanning

On March 24, 2022, the Ohio Supreme Court reviewed the Ohio Dormant Mineral Act and further clarified the steps a surface owners must take to identify and locate mineral holders before serving notice of abandonment.

In *Fonzi v. Brown*, Slip Opinion No. 2022-Ohio-901, a grantor reserved mineral rights in Monroe County, Ohio property in two 1952 deeds which noted that the grantor actually lived in Washington County, Pennsylvania. In 2012, the surface owners hired an attorney to conduct a search for the mineral holders to perform a DMA abandonment. The attorney only searched Monroe County and conducted a limited internet search but did not search Washington County, PA, despite the fact that the original reservation deeds stated that was where the grantor lived. When the attorney did not find any current holders, the surface owners served their notices of abandonment by publication.

The Court began its analysis of the case by definitively holding that any surface owner seeking to abandon a dormant mineral interest must serve notice under the DMA; there is no method or means to abandon minerals that does not include the notice requirement. Before serving notice to the mineral holders, the surface owners must use “reasonable diligence” in their search to find the holders. According to the Court, a surface owner who fails to use “reasonable diligence” to identify and locate mineral holders cannot abandon minerals via the DMA.

Surface owners do not need to “do the impossible” to find the holders, but must search the places where the evidence leads them to look. “Reasonable diligence” is just what it sounds like—making reasonable efforts to find mineral holders. In *Fonzi*, the surface owners had evidence (in the reservation deeds) that the grantor/reservor of the minerals lived in Washington County, Pennsylvania. Nonetheless, the surface owners did not search Washington County—they only searched Monroe County, where the property was located, and made a limited internet search. Because the surface owner did not search for the current holders in Washington County, Pennsylvania, the Court held that the surface owners did not use reasonable diligence and failed to abandon the minerals.

When it comes to reasonable diligence, the devil is in the details and what constitutes reasonable efforts in one case may or may not be sufficient (or required) in another. For example, what would have constituted reasonable diligence by the surface owners in *Fonzi*—searching the probate records of a different state—would likely not be required in a case where the surface owner had no reason to know the mineral holder lived outside of Ohio. Because each chain of title is different, the steps a surface owner must take to satisfy the “reasonable diligence” standard in his or her efforts to locate a mineral holder before serving notice will vary, perhaps significantly, from case to case.

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