

Ohio Appellate Court Adopts Texas Rule to Resolve Mineral Ownership Dispute



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On December 18, 2017, the Ohio Court of Appeals for the Seventh Appellate District issued a decision in which the Court adopted a Texas rule known as the Duhig Rule to interpret conflicting mineral reservations in a chain of title and determine ownership of the minerals as between surface owners and mineral owners. The case is known as *Talbot v. Ward*, 2017-Ohio-9213.

Lawsuits pitting surface owners against mineral owners over ownership of oil and gas rights are still commonplace. This is true even after the Supreme Court of Ohio issued its sweeping decision on September 15, 2016 in *Corban v. Chesapeake Exploration, LLC*, 2016-Ohio-5796, holding that the 1989 version of the Ohio Dormant Minerals Act (“1989 DMA”) cannot be used to automatically abandon mineral rights. After *Corban*, surface owners must follow the mandatory statutory notice procedure set forth in the 2006 version of the Ohio Dormant Minerals Act (“2006 DMA”) in order to abandon mineral rights.

The *Talbot* case was an appeal of a lawsuit involving both 1989 DMA and 2006 DMA claims between surface owners and mineral owners. The trial court had granted judgment

in favor of the surface owner prior to the *Corban* decision, so the Court of Appeals reversed this judgment on the authority of *Corban*. There were also 2006 DMA claims brought by the mineral owners. Ultimately, the Court of Appeals was asked to decide the outcome the following fact scenario, which is simplified in this article for ease of explanation:

- A conveys property to B, and reserves 50% of the oil and gas.
- B then conveys the same property to C and also reserves 50% of the oil and gas.
- C then conveys the property to D, and reserves 50% of the oil and gas and 50% of the oil and gas already reserved by the formers owners.

The question ultimately confronting the Court was: what interest does B own? In other words, did B’s deed to C reserve the other 50% of the minerals that were not already reserved in A’s deed to B, or was B’s deed simply placing C on notice of the prior reservation in A’s deed to B? Although B only owned 50% of the minerals when B transferred the property to C, B’s deed to C only accounted for 50% of the minerals, not both halves (the 50% reserved by A and the 50% then owned by B). So who owns the second half?

The *Talbot* Court ruled that B’s deed to C was ambiguous because it could be read one of two ways: that B was either reserving the remaining 50% of the minerals or that B was giving notice of A’s prior 50% mineral reservation. To resolve this ambiguity, the Court first applied Ohio’s rules regarding contract interpretation, which allowed it to look at the other deeds in the chain of title before and after the B’s deed to C. The Court ruled, among other things, that C’s deed to D showed that C believed it owned 50% of the minerals because C specifically referred to both 50% mineral interests in its deed to D (the 50% owned by C and the prior reservation). Therefore, using this example, the Court ruled that B did not own any interest in the property, and that the minerals were owned by the successors of A and D (with each party owning a 50% interest).

Mindful that the surrounding deeds and other instruments of record may not always resolve a deed ambiguity, the Court then ruled that B was also prevented from claiming that it owned the 50% mineral interest, because doing so would cause B to breach the warranty of title in its deed to C. In other words, B’s deed to C contained a warranty of title (most deeds used to transfer real property between unrelated parties are warranty deeds). This warranty prevents B from later making a claim

to the 50% of the minerals referred to in B's deed, because B warranted (or promised) to C that it was transferring 50% of the minerals to C. The rule articulated by the Talbot Court was originally stated in a Texas case, *Duhig v. Peavy-Moore Lumber Co.*, 135 Tex. 503 (1940) and is known as the Duhig Rule. It is a rule of estoppel that is applied in the exact situation confronted by the Talbot Court.

The Court's decision in Talbot was sorely needed because it addressed a situation that is repeating itself in lawsuits throughout the Utica Shale counties in Ohio; namely, court cases in which there are multiple deeds in the chain of title containing multiple (or possibly repeating prior) mineral reservations. Talbot will help Ohio courts determine whether repeating mineral reservations in a chain of title should be treated as actually reserving the mineral rights or merely putting the grantee on notice of the prior reservation. The Talbot decision will help bring clarity to the law and give guidance to trial courts faced with hundreds of lawsuits based on mineral reservations that occurred decades ago where most if not all the parties involved are now dead.

The legal issues in Ohio courts over valuable mineral rights are far from over. Surface owners still have an array of potential quiet title and declaratory judgment claims to assert when seeking to reclaim ownership of mineral

rights. Surface owners are still able to assert claims under the 2006 DMA, the Marketable Title Act, and for common law abandonment. Now the Duhig Rule may help surface owners in certain situations claim title to mineral interests underlying their properties as well. Nevertheless, surface owners and mineral owners in Ohio continue to face significant legal hurdles over the ownership of valuable oil and gas rights and royalties. The Talbot case illustrates the complexity of the legal issues and highlights the importance of retaining experienced oil and gas counsel to advise clients as to title to and ownership of severed mineral interests.

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