Ohio Court of Appeals Clarifies MTA and DMA Issues in Recent Oil and Gas Rights Cases

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In a series of opinions following the recent Supreme Court of Ohio decision in *Blackstone v. Moore*, 2018-Ohio-4959, the Seventh District Court of Appeals has ruled that the Marketable Title Act ("MTA") and the Dormant Mineral Act ("DMA") apply to both severed mineral or severed royalty interests. In other words, surface owners seeking to terminate reserved mineral or royalty interests have two statutes to use as a possible basis for cancelling these types of interests. Likewise, reserved mineral holders may seek to preserve their severed mineral and royalty interests under both statutes.

In general, the MTA calls for an automatic extinguishment of property interests created prior to a surface owner's chain of title to property, if the surface owner has an unbroken chain of title for more than 40 years after the prior property interest was created and there are no specific references to the prior interest in the surface owner's chain of title. In *Blackstone*, the Supreme Court applied the MTA to an oil and gas royalty interest and ultimately held that it was preserved. The Seventh District had previously held in *Pollock v. Mooney*, 2014-Ohio-4435, that the MTA applies to extinguish or preserve all interests, including oil and gas interests. However, that issue recently had been challenged because of a perceived conflict between the MTA and DMA, which led to some trial court rulings holding that the MTA did not apply to extinguish mineral interests.

Under the DMA, if no "savings events" apply to the mineral interest, a surface owner who follows the mandatory notice procedure and other requirements in the DMA may have dormant mineral interests deemed abandoned. The DMA also allows mineral holder to forever preserve their interest from being abandoned, and, significantly, allows for one mineral owner to preserve as to all mineral owners. The Seventh District in *Greer v. Frye*, 2017-Ohio-4035, has already ruled that the DMA applies to both mineral interests and royalty interests and can be used to have both types of interests preserved or declared abandoned.

Since December 13, 2018, when the Supreme Court issued its decision in *Blackstone*, the Seventh District has issued several rulings that followed *Blackstone*. For example, in *Miller v. Mellott*, 2019-Ohio-504, the Seventh District held that both the MTA and DMA apply to mineral interests, and therefore, the trial court erred in holding that the MTA could not be applied to extinguish a mineral interest. Likewise, in *Soucik v. Gulfport Energy*, 2019-Ohio-491 (February 7, 2019), the Seventh District applied both the MTA and the DMA to reverse a trial court ruling that terminated various reserved mineral interests. Finally, in *Stalder v. Bucher*, 2019-Ohio-963 (March 13, 2019), the Seventh District make it clear that the oil and gas interest was subject to both the MTA and DMA.

In all three cases, the Court reviewed both the MTA and the DMA and applied the separate requirements of each statute to determine the validity of the oil and gas interests in question. Regarding the MTA, the surface owner must hold an unbroken 40-year chain of title based on a "root of title" deed that creates the interest upon which marketability is being determined. For example, if the surface owner's root of title deed contains a mineral reservation, the MTA cannot be used to extinguish the interest.

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Regarding the DMA, the Seventh District has been also focusing on the surface owner compliance with the mandatory notice procedure. In *Shilts v. Beardmore*, 2018-Ohio-863, the Seventh District held that surface owners must use "reasonable diligence" in attempting to locate heirs before they can skip the certified mail requirement and serve publication. And then in *Sharp v. Miller*, 2018-Ohio-4740, the same court ruled that there is no "bright-line rule" as to what efforts constitute "reasonable due diligence" and a surface owner's reasonable diligence will be determined on a case-by-case basis. Id. at ¶ 17. Finally, in *Miller v. Mellott*, 2019-Ohio-504, the court of appeals then determined that, because the surface owners failed to submit any evidence of their efforts undertaken to identify the names and addresses of mineral holder's heirs, the surface owners failed to comply with the DMA notice requirements, and therefore the their abandonment notice was legally ineffective.

In short, although Ohio law regarding the termination and preservation of mineral rights is still evolving, the right and obligations of surface owners and mineral holders under the MTA and DMA are becoming more clear, with the rulings in *Miller v. Mellott, Soucik v. Gulfport Energy*, and *Stalder v. Bucher*. Nevertheless, surface owners and mineral owners continue to face significant challenges in disputes over ownership of valuable mineral interests. Under either statute, litigation is usually needed to "quiet title" to the disputed mineral or royalty interest before ownership of the interest can be recognized. This uncertainty and the need for litigation highlights the importance of retaining an experienced oil and gas attorney to advise clients with regard to the abandonment, preservation and the ownership of mineral interests.

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