

## Ohio Supreme Court Rules That the Marketable Title Act Is Applicable to Severed Mineral Interests

By David J. Wigham

In a closely-watched case that carried potentially drastic consequences, on December 2, 2020, the Supreme Court of Ohio issued its decision in *West v. Bode*, 2020-Ohio-5473. In a close 4-3 decision, the Court held that there is no “irreconcilable conflict” between the provisions of the Marketable Title Act, R.C. 5301.47, et seq. (“MTA”) and the Dormant Mineral Act, R.C. 5301.56 (“DMA”), and therefore both statutes apply to severed mineral interests in Ohio. As stated by the Court, both acts “afford independent procedures either of which may be used to affect the termination of a severed mineral interest, depending on the circumstances of the case and the time elapsed.” *Id.* at ¶ 44. Accordingly, surface owners retain joint remedies under both statutes to seek termination of severed mineral interests, as opposed to being limited to pursuing abandonment under the less-favorable DMA.

Under Ohio law, when two statutes are in conflict and if the conflict is irreconcilable, the more specific statute controls over the general statute. Thus, the issue in *West v. Bode* was whether there was an irreconcilable conflict between the MTA and DMA. In its decision, the Court found that, although the two statutes were indeed in conflict, the conflict was not irreconcilable. In other words, the Court concluded that although the statutes operated differently toward the same goals, this did not mean that both could not be given effect.

To reach this conclusion, the majority of the Court analyzed the operative provisions of the MTA and DMA. The Court observed that the MTA “extinguishes property interests by operation of law after 40 years from the effective date of the root of title unless a saving event has occurred.” *Id.* at ¶ 15. The Court then noted that there are several “savings events” that may protect a property interest from being extinguished under the MTA. Conversely, the Court noted that the DMA contains a different mechanism to facilitate the abandonment of mineral interest. Specifically, the DMA requires that a surface owner provide a mandatory notice before a mineral interest can be “deemed abandoned and vested in the surface owner.” Additionally, mineral owners have the opportunity to preserve the interest by filing a notice of preservation within 60 days of the surface owner serving its notice of intent to have the mineral interest abandoned.

The Court observed that the two statutes operate differently, meaning they contain different requirements and time periods, and provide for different savings events. In addressing the appellants’ concerns that the joint application of the two statutes may result in disparate outcomes, the Court agreed that this could result in a mineral interest being preserved under one statute but terminated under the other statute. This consequence, however, did not rise to the level of an irreconcilable conflict between the two statutes, in the Court’s view.

As a result of this ruling, surface owners may continue to avail themselves of both the MTA and DMA to attempt to terminate severed mineral interests, and severed mineral interest owners must defend against possible termination under both statutes, in litigation to “quiet title” to the disputed mineral interests before ownership can be recognized. Essentially, in the wake of the *West v. Bode* decision, surface owners have retained a powerful tool—the MTA—which allows them to seek to extinguish severed mineral

interests, a process they may invoke in addition to their remedies under the DMA. On the one hand, *West v. Bode* clarifies an issue that had been pending before lower courts for years; on the other hand, the decision will undoubtedly lead to additional litigation as there are many unanswered questions as to how, in practice, the MTA operates to extinguish severed mineral interests.

If you have any questions or concerns, please do not hesitate to contact any of the listed Roetzel attorneys.

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