

Ohio Supreme Court to Decide Whether the Ohio Marketable Title Act Applies to Severed Oil and Gas Interests



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On January 21, 2020, the Supreme Court of Ohio accepted jurisdiction over *West v. Bode*, an appeal from the Seventh District Court of Appeals, to decide an important legal issue that should provide much-needed clarity to landowners, mineral owners, and shale producers, specifically, whether *both* the Marketable Title Act (“MTA”) and the Dormant Mineral Act (“DMA”) may be used to quiet title to severed oil and gas interests, or whether the two statutes conflict and the DMA provides the exclusive remedy.

As a backdrop, following the Ohio Supreme Court’s decision in *Corban v. Chesapeake Exploration, L.L.C.*, 2016-Ohio-5796—which held that the 1989 version of the DMA was not self-executing and did not allow for automatic abandonment of severed minerals and that the 2006 version of the DMA applied to the abandonment of severed minerals—many landowners began using the MTA as an alternative means to terminate severed oil and gas interests.

In general, the MTA automatically extinguishes property interests created prior to a landowner’s chain of title to property if the landowner has an unbroken chain of title for more than 40 years after the prior property interest was created and there were no specific references to the prior interest in the landowner’s chain of title.

Conversely, as a general matter, the 2006 DMA deems a severed mineral interest abandoned only after a surface owner serves a notice of abandonment on the mineral holders and those mineral owners do not timely respond by filing a preservation of their mineral interest. Because the MTA automatically extinguishes mineral interests whereas the DMA requires the surface owner to first give notice and provides the mineral owner with an opportunity to preserve, the MTA is viewed as more favorable for landowners.

In the *West v. Bode* case, landowners brought an action against severed royalty interest holders under the MTA seeking to quiet title to those severed interests in their favor. The trial court concluded that the landowners failed to state a claim under the MTA because the MTA conflicted with the DMA, and the DMA—being the more specific statutory provision—controlled. On appeal, the Seventh District disagreed, declining to find a conflict between the MTA and DMA and therefore concluding that both statutes may be utilized in quiet title litigation seeking to terminate severed oil and gas interests. *West v. Bode*, 2019-Ohio-4092.

Upon a discretionary appeal from that decision, the Supreme Court of Ohio accepted one proposition of law:

“The specific statute being the Ohio Dormant Mineral Act O.R.C. Section 5301.56 supersedes and controls over the Ohio Marketable Title Act being a general statute O.R.C. 5301.47, et seq. and the two are in conflict as shown herein.”

Under Ohio law, when two statutes are in conflict, the specific statute controls over the more general statute. In the context of the MTA and the DMA, many mineral owners, like those in *West v. Bode*, have argued that the more specific DMA should apply to the termination of severed mineral interests instead of the more general MTA, because the two statutes are in conflict.

The Ohio Supreme Court’s decision in *Blackstone v. Moore*, 2018-Ohio-4959, added fuel to this dispute, because although that case involved interpretation of an MTA exception in a quiet title action involving a royalty interest, the Court did not explicitly hold that the MTA applied to mineral interests, and one Justice wrote a separate

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concurring opinion questioning the MTA's applicability to mineral interests in light of its conflict with the more specific DMA. However, following the release of *Blackstone* on December 13, 2018, the Seventh District issued a series of decisions, including *West v. Bode*, in which it continued to apply the MTA to severed mineral interests.

The acceptance of *West v. Bode* will result in an Ohio Supreme Court decision determining whether the MTA and DMA conflict and whether the MTA may be utilized as an alternative means to terminate severed mineral interests. There will be intense interest in the outcome of this case as the Court's ruling will undoubtedly result in a large shift in ownership of valuable mineral rights.

And if there was any doubt that the Supreme Court will be deciding this issue, on February 4, 2020, the Court also agreed to jurisdiction and hold the cross-appeal in *Miller v. Mellott*, 2019-Ohio-1515, on the same issue that was accepted by the Court in *West v. Bode*.

Ohio law regarding the termination and preservation of severed oil and gas rights is still evolving. The rights of surface owners under the MTA are now in flux given the Supreme Court's deci-

sion to review the issue of whether the MTA even applies to severed oil and gas interests. A ruling by the Supreme Court of Ohio that MTA does not apply would be a major defeat for landowners seeking to extinguish valuable mineral interests and a huge victory for mineral owners seeking to preserve these interests. Under either the MTA or the DMA, litigation is usually needed to "quiet title" to the disputed mineral or royalty interests before ownership of the interest will be recognized. The combined impact of continued uncertainties in the law and the need for litigation highlights the importance of retaining an experienced oil and gas attorney who can advise clients with respect to severed oil and gas interests.

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