IN THE SUPREME COURT OF OHIO

JAY HOUSEHOLDER, SR., et al. Appellants, -vs- **ERNEST SHANNON, et al.** Appellees.	Case No. On Appeal From The Jefferson County Court of Appeals Seventh Appellate District Court Of Appeals Case No.: 13 JE 25

MEMORANDUM IN SUPPORT OF JURISDICTION BY APPELLANTS

Robert Guehl (#0005491) (Counsel of Record)
Brandon R. Cogswell (#0081542)
Burton Law LLC
714 East Monument Ave.
Dayton, Ohio 45402
Telephone: (937) 610-0444
Facsimile: (937) 660-9383
e-mail: bcogswell@burton-law.com
e-mail: rguehl@burton-law.com
Attorneys for Appellants

Steven Shrock
Clinton Bailey
Critchfield, Critchfield and Johnson, Ltd.
128 E. Jackson St.
Millersburg, Ohio 44654
Telephone: 330.674.3055
Facsimile: 330.674.4469
e-mail: shrock@ccj.com
e-mail: bailey@ccj.com
Attorneys for Appellees

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I. THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This appeal concerns a question of public or great general interest to landowners and mineral interest holders in the State of Ohio concerning the application of the Ohio Dormant Mineral Act R.C. 5301.56 (the "DMA"). This Court has granted review in two cases, thus far, that involve the Dormant Mineral Act, *Dodd v. Croskey*, 7th Dist. Harrison No. 12-HA-6, 2013-Ohio-4257 (discretionary appeal accepted, 2013-173) and *Chesapeake Exploration, L.L.C. v. Buell*, S.D. Ohio Case No. 2:12-CV-916 (discretionary appeal accepted, 2014-0067). While each of these cases involves questions more narrow than the present case, they demonstrate the importance of clarifying the interpretation of the DMA.

In this case surface owners attempted to declare mineral interests abandoned pursuant to the 1989 version of the DMA after the passage of the 2006 DMA. The 2006 DMA added significant safe guards to protect the mineral holder's property interest from abandonment.[1] Courts and property owners throughout Ohio have competing theories about whether the 1989 or the 2006 version of the DMA applies and whether mineral interests are automatically vested pursuant to the 1989 DMA. Trial courts throughout Ohio have interpreted these issues differently and there are a large number of cases pending in Ohio Appellate Courts, the Ohio District Court and the Sixth Circuit that involve the Dormant Mineral Act.

The vast majority of cases pending in Ohio common pleas courts and appellate courts involve claims by surface owners that the minerals under their property have been automatically abandoned pursuant to the 1989 DMA. The interpretation of the 1989 DMA as the proper

[1] R.C. § 5301.56 was originally passed on March 22, 1989 and amended on June 30, 2006. The 2006 version was the statute in effect when Appellees' filed their quiet title action against the Householder Appellants in 2012.

statute should be rejected. The current law under the 2006 DMA provides landowners and developers with a consistent process for determining and recording abandoned mineral interests without clogging up the court system with unnecessary quiet title actions.

In this case the Seventh District Court of Appeals misapplied the law when it held that: (1) the 1989 DMA applies instead of the 2006 DMA; and (2) the 1989 version of Ohio's Dormant Mineral Act was self-executing and automatically vests the mineral interests in the surface owner if a savings event did not occur in the 20 years prior to the Act's passage. This decision runs contrary to the purpose behind the DMA and Ohio's Marketable Title Act to simplify land title transactions by allowing people to rely on a record chain of title.

Given the number of cases pending before Ohio courts, and the importance of a clear interpretation of the DMA for both property owners and developers, it is clear that the issues involved in this case are of public and great general interest.

II. STATEMENT OF THE CASE AND FACTS

None of the facts in this case are in dispute. Over the years, the surface and mineral interest was transferred to the heirs of the original owner, Joseph Lawrence. On September 9, 1946, when Joseph Lawrence died, both the surface and the underlying mineral interest of his property was transferred to his four daughters, Elva Lawrence, Alma Lawrence, Jetta Householder and Chellissa Swickard, in four undivided one-quarter interests by Certificate of Title.

In 1950, Jetta Householder died, transferring her interest in the surface and the minerals to Arthur L. Householder, Naomi Swickard, Cecelia Householder, Jay E. Householder, Dwight Householder and Arthur S. Householder by Certificate of Transfer. In 1952, the surface estate was subsequently transferred to Elva and Alma Lawrence by deed that contained a reservation of all coal, oil and other minerals. In 1957, Chellissa Swickard transferred the surface interest in her undivided one-quarter estate to Elva and Alma Lawrence and reserved all oil, gas and other

minerals. In 1976, Elva and Alma Lawrence subsequently transferred the surface interest in the property to the Appellees ("Shannons") by a deed that contained the following mineral reservation:

> EXCEPTING AND RESERVING all the coal, oil and gas and other minerals in, on and under said premises, with all the mining rights necessary and incident thereto. And further the right to mine and remove the said coal and to make all the necessary openings and entries in doing so, with the further right to erect all ventilation and other necessary openings in mining and removing coal therefrom, with the further right to erect and construct tipples and tracks and other structures on the land. And also the right to drill and operate for oil and gas on said premises, with all the rights necessary and incident thereto.
>
> *These exceptions and reservations are limited to those property rights which have been excepted and reserved in Grantor's chain of title.*

The Shannons made no effort to have the mineral interest declared abandoned until December 28, 2010, when they published notice of their intent to declare the mineral interest abandoned in the Herald Star, a newspaper in Jefferson County, under the 2006 version of the Dormant Mineral Act. Householder Appellants ("Householders") were not served by certified mail, as the statute requires. On July 22, 2011, after learning of the published notice, Jay Householder, Sr., acting on behalf of the Householders, recorded a claim to preserve the mineral interest with the County Recorder.

On May 14, 2012, Shannons filed a complaint for quiet title and for declaratory judgment against the Householders' mineral interests. The Complaint was based on both the 1989 version of the DMA and the 2006 version of the DMA. The Householders filed a counterclaim for quiet title and declaratory judgment against the Shannons' claim to the mineral interests.

The parties filed cross motions for summary judgment and, on July 17, 2013, the trial court issued a decision granting the Shannons' motion for summary judgment and overruling the Householder motion for summary judgment. The trial court applied only the 1989 DMA in

concluding that the mineral interests were automatically abandoned in the absence of any savings event within the 20 years prior to the enactment of the 1989 DMA.

The Householders appealed to the Seventh District Court of Appeals. On June 2, 2014, the appellate court issued an opinion affirming the trial court's decision. It held (1) that the 1989 DMA applies over the 2006 version of the DMA and (2) that the 2006 DMA cannot be applied retroactively.

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: The 1989 version of the Dormant Mineral Act does not apply after the effective date of the 2006 version of the Dormant Mineral Act.

and

Proposition of Law No. 2: In order for a mineral interest to vest under the 1989 version of the Dormant Mineral Act, the surface owner must take some action in order to establish abandonment prior to the effective date of the 2006 Dormant Mineral Act.

Proposition of Law 1 and 2 should be considered together as they are closely related.

The Seventh District applied the 1989 DMA and the idea of automatic vesting without analyzing Ohio's public policy behind automatic forfeitures or the purpose behind the DMA, which is to facilitate land title transactions and allow people to rely on a record chain of title.

The Dormant Mineral Act, be it the 1989 version or the 2006 version, is part of Ohio's Marketable Title Act, R.C. §§ 5301.47, et. seq. The Marketable Title Act governs all interests in land including severed mineral interests. *See,* R.C. 5301.47, et. seq. The purpose of the DMA is set forth in R.C. § 5301.55:

> Sections 5301.47 to 5301.56, *inclusive*, of the Revised Code, *shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title* as described in section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

O.R.C. § 5301.55 (emphasis added).

In relying on the 1989 DMA, the Seventh District hindered the purpose behind the DMA. Maintenance of a clear record chain of title facilitates development by providing a clear record of who actually owns the minerals. The Seventh District's holding allows a transfer of real property ownership to occur outside the record chain of title. Potential purchasers cannot rely on the record of title if title transfers occur outside the record. The 2006 DMA clarified the many ambiguities contained in the 1989 DMA, not by affirming the automatic abandonment, but by getting rid of it altogether and providing for the requirement of notice before abandonment. *See*, R.C. §5301.56 (E).

The Seventh District's decision also ignores long-standing policy in this State against forfeitures. "[F]orfeitures are not favored by the law. The law requires that we favor individual property rights when interpreting forfeiture statutes." *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St.3d 532, 534, 605 N.E.2d 368 (1992); See also, *Dodd v. Croskey*, 7th Dist. Harrison No. 12 HA 6, 2013-Ohio-4257 at ¶ 35 (discretionary appeal accepted, 2013-173). "Forfeitures and penalties are not favored in law or equity and statutory provisions therefor must be strictly construed." *State ex rel. Lukens v. Industrial Com.,* 143 Ohio St. 609, 611, 56 N.E.2d 216 (1944).

Applying the 1989 DMA to every mineral interest will result in excessive litigation to clear up the multiple clouds on title. Since the 1989 DMA leaves no clear record of mineral right ownership, the only way to create a clear record of title is to litigate each claim to determine if one of the savings events occurs. This will tie up the development of mineral interests in trial courts and appellate courts for years instead of facilitating and promoting development of those mineral interests.

The Seventh District relied heavily on the phrase "deemed abandoned and vested" yet it did not interpret that phrase as a whole; it only interpreted the word "vested." "Vested" however, is modified by the word "deemed." The phrase "deemed abandoned and vested" contained in 5301.56 (B) must be interpreted in such a way that the word "deemed" modifies the words "abandoned" and "vested." It is improper to interpret the phrase to mean that a mineral interest is deemed abandoned and therefore vested, as the Seventh District held. The proper way to interpret this language is to use the word "deemed" as a modifier of both "abandoned" and "vested." Therefore, the mineral interest may be "deemed vested" thus requiring additional action on the part of the surface owner.

Finally, the appellees did not attempt to assert abandonment of the mineral interest while the 1989 DMA was in effect. Instead, they filed their action in 2012; well after the 1989 DMA was amended to include required notice provisions. The Seventh District's holding rewards a party for sitting on their rights for over 20 years.

It is clear that the 2006 DMA is the correct version of the statute to follow and is the applicable statute in this case.

Proposition of Law No. 3: The 2006 DMA Operates Retrospectively and Applies to Severed Mineral Interests Created Before its Effective Date.

The Seventh District held that the 2006 DMA does not apply retroactively to mineral interests created prior to its effective date. The 1989 DMA provides for a 20-year look back period. A look back period necessarily results in a statute's application prior to its effective date. Therefore, following the Seventh District's logic, the 1989 DMA results in retroactive application.

The court's logic leads to the conclusion that the 1989 DMA cannot be applied retroactively to mineral interests created prior to its effective date. Both the 1989 DMA and

2006 DMA apply retroactively to mineral interests created within the 20 years preceding the statutes' effective date. Pursuant to the Seventh District's logic, if the 1989 DMA is not applicable because it calls for retroactive application, the Householder Appellants are the rightful owners of the mineral interest because their interest was reserved in 1952 and 1957. If, however, this Court determines that the statutes do apply retroactively, then the 2006 DMA applies because it was the statute in effect when the Appellees filed their complaint. Either way, the Seventh District's analysis is ambiguous at best.

IV. CONCLUSION

For the reasons stated above, this case involves numerous matters of public or great general interest. The Appellant requests that this Court accept jurisdiction of in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

Robert Guehl (#0005491) (Counsel of Record)
Brandon R. Cogswell (#0081542)
Burton Law LLC
714 East Monument Ave.
Dayton, Ohio 45402
Telephone: (937) 610-0444
Fax: (937) 660-9383
e-mail: bcogswell@burton-law.com
e-mail: rguehl@burton-law.com
Attorneys for Appellants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing has been served upon the following via regular U.S. mail, postage pre-paid on this 16 day of July 2014:

Steven Shrock
Clinton Bailey
Critchfield, Critchfield and Johnson, Ltd.
128 E. Jackson St.
Millersburg, Ohio 44654
Telephone: 330.674.3055
Facsimile: 330.674.4469
e-mail: shrock@ccj.com
e-mail: bailey@ccj.com
Attorneys for Appellees

_____
Robert Guehl