

Publications

Oil and Gas Alert: Supreme Court of Ohio Rules on Applicability of Ohio Marketable Title Act to Severed Mineral Interests

Related Professionals

Gregory D. Russell

Ilya Batikov

Mark A. Hylton

Related Industries

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On December 2, 2020, the Supreme Court of Ohio held that the Ohio Marketable Title Act (OMTA) applies to severed mineral interests despite the enactment of the Ohio Dormant Mineral Act (ODMA). See *West v. Bode*, Slip Opinion No. 2020-Ohio-5473. In its decision, the Court held that there is no irreconcilable conflict between the OMTA and the ODMA, and as a result, each act can apply independently to terminate severed mineral interests.

You can read the decision [here](#).

Background

In 1902, George L. and Charlotte Parks sold one-half of the royalty interest in the oil and gas (the Severed Interest) underlying 66 acres (the Property) to C.J. Bode and George T. Nalley. Meanwhile, Wayne West acquired the balance of the Property and then conveyed a portion to Rusty West in 2002.

Wayne and Rusty West sued Bode and Nalley's successors in 2017, claiming that the OMTA extinguished the Severed Interest. Other claimants—John L. Christman, Katherine Haselberger, and Charlotte McCoy (collectively, the Christman Heirs)—moved to intervene and asserted a counterclaim, alleging they owned a portion of the Severed Interest by inheritance.

The Wests and the Christman Heirs filed competing summary judgment motions, with the Wests arguing that the OMTA extinguished the Severed Interest and the Christman Heirs arguing that the OMTA no longer applied after the enactment of the ODMA, which was the more specific statute applicable to severed mineral interests (the ODMA did not apply under the facts in this case). The Christman Heirs prevailed at the trial court, but the appellate court reversed, holding the OMTA and the ODMA both apply to severed mineral interests. The Christman Heirs then appealed to the Supreme Court of Ohio, contending that the OMTA and the ODMA irreconcilably conflicted, and under R.C. 1.51,^[1] the more specific provisions of the

ODMA superseded the general provisions of the OMTA.

Decision

Ruling against the Christman Heirs, the Supreme Court of Ohio held that there is not an irreconcilable conflict between the OMTA and the ODMA, and therefore each act must be applied as the General Assembly wrote them – “as independent, alternative statutory mechanisms that may be used to reunite severed mineral interests with the surface property subject to those interests.” The Court explained that differences between the statutes cause them to operate differently (e.g., with respect to the threshold period of time required for termination of a severed mineral interest) and achieve different results (extinguishment by operation of law, requiring no further action (OMTA) vs. deemed abandonment, requiring further action (ODMA)). Because the OMTA and the ODMA “afford independent procedures, either of which may be used to effect the termination of a severed mineral interest, depending on the circumstances of the case and the time that has elapsed,” the Court affirmed the appellate court’s decision and remanded the case to the trial court to apply the OMTA.^[2]

Dissent

In a dissenting opinion, Justice Kennedy wrote that the two statutes irreconcilably conflicted.^[3] She reasoned that by (i) using the term “abandoned” rather than “extinguished” in the ODMA, (ii) creating distinct savings events between the two statutes, and (iii) enacting a notice provision in the ODMA to protect the mineral interest holder’s property rights, the General Assembly created through the ODMA a specific statutory mechanism to terminate dormant mineral interests. That specific statutory mechanism superseded the more general OMTA to serve as the sole statutory mechanism to terminate severed mineral interests.

Questions relating to this decision may be addressed to Greg Russell (gdrussell@vorys.com), Webb Vorys (wivorys@vorys.com), Jay Carr (jacarr@vorys.com), Ilya Batikov (ibatikov@vorys.com), or Mark Hylton (mahylton@vorys.com).

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^[1] R.C. 1.51 provides that “[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.”

^[2] In their merit brief, the Christman Heirs argued that applying the OMTA would violate due process. The Court declined to rule on the issue, because it was not raised in the lower courts.

^[3] In her dissent, Justice Kennedy cited to R.C. 1.52(B), which provides that “[i]f amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each,” but “[i]f the amendments are substantively irreconcilable, the latest in date of enactment prevails.”