

Oil and Gas Alert: Supreme Court of Ohio to Weigh Portion of Dormant Mineral Act

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On March 12, 2014, the Supreme Court of Ohio accepted an appeal in *Dodd v. Croskey* (7th Dist. 2013) on one issue pertaining to the 2006 version of the Dormant Mineral Act, Ohio Revised Code § 5301.56. The Court will consider whether a notice of preservation timely filed after an abandonment notice was effective to preserve a mineral interest where no savings events occurred within the 20 years preceding the abandonment notice.

A. Background

Plaintiff surface owner published a “notice of intent to declare abandonment” (abandonment notice) of certain mineral interests reserved in 1947. The abandonment notice alleged that there were no savings events for the severed mineral interests within the preceding 20 years. Within 30 days after the publication of the abandonment notice, the defendant filed an “Affidavit Preserving Minerals” (claim of preservation) with the office of the county recorder stating that he and his relatives, as the heirs and successors of the original reserving parties, intended to preserve their interests in the mineral rights.

B. Issue

The question was whether the claim of preservation was effective to preserve the severed mineral interest where no savings events occurred within the 20 years preceding the publication of the abandonment notice. To resolve the question, the lower courts had to reconcile the apparent ambiguity between Ohio Revised Code §5301.56 (B) and Ohio Revised Code §5301.56(H)(1)(a).

Ohio Revised Code Section 5301.56(B) provides that any severed mineral interest “*shall*” be deemed abandoned and vested in the surface owner unless certain exceptions apply and none of the savings events under subsection (B)(3) occurred within 20 years immediately preceding the publication or service of the abandonment notice. One of the savings events under subsection (B)(3) occurs when a “[a] claim to preserve the mineral interest has been filed in accordance with [Ohio Revised Code

§5301.56(C)].”

However, Ohio Revised Code §5301.56(H)(1) provides that if the severed mineral holder or the holder’s successor or assignees claim that the mineral interest had not been abandoned, not later than 60 days after the abandonment notice was served or published, they shall file in the county recorder’s office “one of the following:”

- (a) A claim to preserve the mineral interest in accordance with division (C) of this section;
- (b) An affidavit that identifies an event described in division (B)(3) of this section that has occurred within the 20 years immediately preceding the date on which the notice was served or published under division (E) of this section.

The surface owner argued that section (B) controls over subsection (H)(1)(a) and requires the severed mineral holders to demonstrate that a savings event occurred within the 20 years preceding the abandonment notice. The trial court disagreed, concluding that the severed mineral holders successfully preserved their interests by timely filing the claim of preservation. The court of appeals affirmed, concluding that the statute provides severed mineral holders with two separate means of preserving their interests after the filing of the abandonment notice. A severed mineral holder can file either (i) a claim to preserve the mineral interest or (ii) an affidavit identifying the occurrence of a savings event within the 20 years preceding the abandonment notice.

A contrary interpretation, the court of appeals reasoned, creates two problems. First, it requires a claim of preservation to be filed within the 20 years preceding the abandonment notice and again within the 60 days after the abandonment notice. This results in a redundancy in the statute as subsection (H)(1)(b) separately permits the filing of an affidavit identifying a savings events within the 20 years preceding the abandonment notice. Second, such an interpretation would not give effect to all the words used and not used within the statute, as subsection (H)(1)(b) makes specific reference to the 20-year language in subsection (B)(3) whereas subsection (H)(1)(a) does not. The legislature’s choice to omit the 20-year language from subsection (H)(1)(a) suggests that the 20-year requirement is inapplicable to a claim to preserve.

C. The Supreme Court of Ohio Accepts Appeal

The Supreme Court of Ohio accepted jurisdiction as to the following issue:

“Ohio Revised Code Section 5301.56(B)(3) requires a showing by a party claiming the preservation of a prior mineral interest of a ‘savings event’ that occurred in the 20 years prior to notice being served and not a ‘savings event’ after the date of the notice being served.”

However, the Supreme Court denied jurisdiction of cross appeals that concerned two other issues addressed by the lower courts: (1) whether the failure of the surface owners to serve the severed mineral holders with the notice of abandonment through certified mail was harmless error when the severed mineral holders received actual notice of the abandonment procedure, and (2) whether a restatement of a prior mineral reservation in a later surface conveyance is a “title transaction” within the meaning of Ohio Revised Code § 5301.56.

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