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Oil and Gas Alert: The Supreme Court of Ohio Publishes its First Decision Analyzing the Ohio Dormant Mineral Act

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On June 18, 2015, the Supreme Court of Ohio issued its first decision analyzing one aspect of the much contested Ohio Dormant Mineral Act. The Court held that a severed mineral interest holder prevented his mineral interest from being deemed abandoned under the 2006 version of the Ohio Dormant Mineral Act (the 2006 DMA) when he filed a claim to preserve his mineral interest in the county recorder's office (1) **after** service of a notice of abandonment and (2) outside of the 20-year window preceding the notice. *Dodd v. Croskey*, [Slip Opinion No. 2015-Ohio-2362](#) (June 18, 2015).

BACKGROUND

In 2009, Phillip Dodd and Julie Bologna (the Dodds) purchased certain real property located in Harrison County, Ohio. Their deed excepted a portion of the oil and gas estate, which was previously reserved by Samuel A. Porter and Blanche Long Porter (the Porters) in 1947.

On November 27, 2010, the Dodds published a notice of abandonment in the county newspaper stating their intention to have the oil and gas previously reserved by the Porters deemed abandoned under the 2006 DMA. On December 23, 2010, John William Croskey filed an affidavit which outlined a history of transactions affecting the Porters' reserved oil and gas interests and identified 36 persons as the current owners of such oil and gas (the Current Mineral Owners). The affidavit further stated that the Current Mineral Owners "do not intend to abandon their rights to the mineral interest, but intend to preserve their rights."

The Dodds filed a declaratory-judgment action to quiet title against the Current Mineral Owners to establish the ownership of the oil and gas located beneath the Dodds' property. In cross motions for summary judgment, an argument was made that the affidavit filed for record by Croskey was sufficient to preserve the mineral interests of all the Current Mineral Owners. In response, the Dodds asserted that the affidavit did not preserve the mineral interests of the Current Mineral Owners because (a) it was filed **after** the Dodds published their notice of abandonment and (b) it did not identify a "savings event" that

occurred within the twenty years preceding the notice of abandonment.

The trial court held, among other things, that the affidavit filed by Croskey was sufficient to preserve the Current Mineral Owners' mineral interests. Specifically, the trial court found

that the clear language of the statute provides the holders of severed mineral interests with the specific right and mechanism to preserve such interests after the holders have received [a] notice [of abandonment]...

Upon appeal, the Seventh District Court of Appeals agreed with the trial court's finding that the affidavit was sufficient to preserve the mineral interests of the Current Mineral Owners.

HOLDING

Affirming the judgment of the appellate court, the Supreme Court of Ohio unanimously held that a claim to preserve filed by a severed mineral interest holder pursuant to R.C. 5301.56(H)(1)(a) is sufficient to prevent the mineral interest from being deemed abandoned under the 2006 DMA if it is filed within 60 days after a surface owner served a notice of abandonment. Moreover, a claim to preserve filed under this subsection of the 2006 DMA does not need to identify a "savings event" within the 20 years preceding the notice of abandonment.

In reaching its holding, the Court concluded that a claim to preserve serves two separate but similar functions under the 2006 DMA. A claim to preserve operates as one of the "savings events" under R.C. 5301.56(B)(3)(e) if it is filed within the 20 years preceding the service of a notice of abandonment. In addition, a claim to preserve can operate to prevent a severed mineral interest from being deemed abandoned under R.C. 5301.56(H)(1)(a) if it is filed within 60 days after service of a notice of abandonment. Thus, under the plain language of the 2006 DMA, a claim to preserve may be used either as a (1) "savings event" if filed within the 20 years preceding the notice of abandonment or (2) mechanism to prevent abandonment if filed within 60 days after service of a notice of abandonment. Either filing is sufficient to prevent the severed mineral interest from being deemed abandoned under the 2006 DMA.

Dodd v. Croskey does not analyze or interpret the 1989 version of the Ohio Dormant Mineral Act, which is the subject of other cases pending before the Supreme Court of Ohio (e.g., *Walker v. Shondrick-Nau*, *Householder v. Swartz*, and *Eisenbart v. Reusser*). We will continue to monitor these cases and report on any decisions issued by the Court.