

LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman



All the cases of interest this time around are from Ohio's 7th Circuit Court of appeals. Only a couple directly involve the Marketable Title Act and Dormant Mineral Act, so more to digest this time

Hogue v. PP&G Oil Company, LLC, 2024-Ohio-2938 (7th Dist.), involved a dispute arising from operations under different depths associated with a single oil and gas lease following a leasehold depth severance. PP&G held 4 traditional, vertical oil and gas wells in Monroe County. PP&G assigned a 2.5% working interest in the wells and 20-acre squares around the units to the Hogues in 2007, "from the surface to the bottom of the deepest producing geological formation." The wells bottomed out around 2,500 feet. In 2011, PP&G subleased various of its lands, including the lands affected by the above wells, to HG Energy LLC as to depths from the top of the Clinton formation to the basement. The sublease was later amended to exclude the land around certain wells, and eventually became vested in Gulfport Appalachia LLC. The Hogues allege that the assignment of working interests to them do not contain express depth restrictions, that they held rights to the land itself surrounding the several wells, and that the sublease of the deep rights under the lands therefore violated the Hogues' property rights. The 7th District Court found that, at the time of the assignment to the Hogues, there was an inherent depth limitation to unitized vertical wells under Ohio law of 4000 feet. Consequently, the Hogues received no rights deeper than 4000 feet and had no inherent interest in any depths or wells subleased to Gulfport. The appeals court remanded the suit to the trial court for further proceedings accordingly.

Henderson v. Stalder, 2024-Ohio-3037 (7th Dist.). This is a case involving the Dormant Mineral Act ("DMA"). Specifically, the Henderson heirs, successors to the last known mineral owner before abandonment proceedings by the surface-owning Stalders, claimed that the Stalders search for the purposes of providing notice of the Henderson heirs rights to preserve, were insufficient. The Hendersons claim that key records were locatable via the internet at the time the surface owners' title examiner undertook its search and should have utilized such records to perform additional research to locate the Henderson heirs. The Appeals Court disagreed with this argument, finding that notice by publication was the appropriate course of action in this instance. However, the Appeals Court also determined that the publication notice requirements under the DMA require reference to the name of a last known holder. Because the Stalders notice by publication did not include such a reference, the abandonment was not completed, and the court sustained the complaint of error by the Hendersons. As a natural outgrowth of this determination, the Appeals Court found that claims under the Marketable Title Act by the Hendersons that were avoided by the trial court now had to be subjected to trial, and so remanded the case accordingly.

Cardinal Minerals, LLC v. Miller, 2024-Ohio-3121 (7th Dist.). This case is directly connected to a similar case from earlier this year, addressed in the last update, but covers different lands owned or claimed by the same parties. Cardinal Minerals LLC brought suit claiming that a severed mineral interest had been preserved in contradiction to a Dormant Mineral Act claim by the surface owners, the Millers. Cardinal Minerals purchased the severed mineral interests from the Pfalzgrafs, heirs of the original severing parties, and claimed that the DMA action of the surface owners was improper for failing to serve notice on the Pfalzgraf heirs.

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The Court of Appeals sidestepped the claim of Cardinal Minerals that the notice requirement under the Dormant Mineral Act was not properly adhered to, instead determining that Cardinal Minerals unlawfully “purchased a lawsuit” under the Doctrine of Champerty (Champerty being defined as “assistance to a litigant by a nonparty, where the nonparty undertakes to further a party’s interest in a suit in exchange for a part of the litigated matter if a favorable result ensues . . .”). The court further stated that the assignment of rights to a lawsuit is void as champerty. For these reasons, Cardinal Minerals’ claims were denied; the Court of Appeals effectively ignored the question of whether the surface owners followed the Dormant Mineral Act requirements by providing notice to the known successors to a reserving title interest holder pursuant to wills and intestate succession. It appears that the 7th District is, once again, doubling down on reasons to validate DMA procedures of questionable value, so it is suspected that additional appeals will follow.

Myers v. Vandermark, 2024-Ohio-3205 (7th Dist.). Another Marketable Title Act case was decided in the 7th Circuit (MTA). Myers owns surface rights to a tract of land in Harrison County, Vandermark is the current holder of severed oil and gas rights under the same. Myes claimed that root of title was a deed dated November 19, 1953, and that for the 40-year period following root of title there was nothing that preserved Vandermark’s severed oil and gas interest, resulting in the same extinguishing to the benefit of Myers on November 18, 1993. According to representations by both parties, the same land and interests had been subject to a lawsuit determining that Myers had somehow failed to properly claim ownership of the minerals at issue through the Dormant Mineral Act (DMA) per a prior court order from 2017. In the prior case, Vandermark claimed ownership had been settled and the instant suit was barred under *res judicata*, and his title had been quieted, while Myers claimed that the prior suit had no bearing on the current, as the MTA issues had not been the subject of litigation. The doctrine of *res judicata* is broadly the concept that, once an issue has been determined by a court order, the same issue cannot be the subject of another suit based on the same facts. The trial court agreed with Vandermark and found that the new attack on Vandermark’s property interest was “without standing and lacks merit.” The Appeals court found the trial court’s determination to be erroneous – Myers had standing because he was a party with an interest or claim in the land at issue, so he had a real interest in the outcome of the case. The Appeals Court also found that *res judicata* MAY apply, but that such a determination had been made prematurely. It should have been done through a motion for summary judgment because it required information not then of the record. Instead, the case had been dismissed pursuant to a motion to dismiss, which is generally reserved for situations where, taking all the parties’ allegations as true, there is no actual issue to be resolved. The Appeals court remanded the case back to trial for further determinations along these lines.

EAP Ohio, LLC v. Sunnydale Farms LLC, 2024-Ohio-4522 (7th Dist.). Landowners brought suit against EAP Ohio, LLC, current leaseholder and operator of wells affecting the lands at issue, for improperly deducting costs from royalty payments. The trial court had made several determinations and then issued a summary judgment in favor of EAP, effectively allowing the deductions. The landowners appealed, making various arguments, including that deductions for trucking and fuel (related to trucking) were not specifically referenced in the lease as acceptable deductions, which only mentioned “compression, transportation, gathering, and dehydrating” as deductible costs. The Appeals Court determined that the trial court had improperly made factual determinations in its summary judgment order, which is supposed to include a decision based solely on issues of law, not issues of fact. The Appeals Court stated that the language at issue was ambiguous as to its meaning, requiring interpretation and possible reliance on extrinsic evidence as to the parties’ intent.

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The Appeals Court further stated that, EAP Ohio LLC should not be allowed to rely on “custom and usage” as extrinsic evidence for its interpretation of the lease because “custom and usage” only applies within a trade or industry. Because the landowners were not part of the oil and gas trade or industry, custom and usage was not an appropriate type of extrinsic evidence to use for interpreting the lease. Additionally, the Appeals Court found that EAP should not be allowed to rely on statutory definitions as extrinsic evidence of the lease meaning because Ohio law has different definitions for seemingly similar concepts, which are context dependent. As such, reliance by the trial court for the definition of “gathering” or “transportation” found in a pipeline statutes was inappropriate in the context of an oil and gas lease interpretation issue. Overall, the Appeals Court reversed the summary judgment in favor of EAP and remanded the case to the trial court.

As always, let us know if you have any comments, concerns or suggestions.

Nik Tysiak
Chair – Legislative and Regulatory Committee
MLBC

2024 VETERANS CHARITY CLAY SHOOT

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