STATE OF MICHIGAN

COURT OF APPEALS

ELMER R. BENCHLEY and VIRGINIA M. BENCHLEY,

Plaintiffs-Appellants,

v

MARY C. BUDD, RAYMOND L. BUDD, MARGARET M. BUDD, MARVIN BUDD and CATHERINE BUDD a/k/a CATHERINE BUDD QUIBELL,

Defendants-Appellees,

and

ARTHUR D. BIRKER, FLORA B. BIRKER, MABEL RUTH BIRKER, EDWARD A. BIRKER, RUSSELL RAYMOND, ROWLAND R. RAYMOND and GREGORY A. RAYMOND,

Defendants.

UNPUBLISHED
April 8, 1997

No. 188500
Clare Circuit Court
LC No. 86-007741-CH

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a judgment apportioning fractional ownership interests in the subsurface mineral rights of certain real estate in Clare County. As the current surface owners of the parcel in question, plaintiffs brought this action asserting title to the previously-severed subsurface mineral rights therein on the ground that the interests were legally abandoned by defendants and reverted to plaintiffs by operation of the dormant minerals act, MCL 554.291 *et seq.*; MSA 26.1163(1) (hereinafter "DMA"). We affirm.

I

Plaintiffs contend that defendant Mary Budd's specific handwritten recitations, made in various ten-year mineral leases in 1951 to 1952, of interests in a royalty pool with regard to the property subject to lease, served to thereafter delimit the mineral interest preserved pursuant to the DMA. We disagree. Although it is unclear why the recitations were included at the end of the leases, we agree with the trial court that the explicit references therein to "royalty" rights belies any contention that real estate was being conveyed thereby. Furthermore, the fact that the recitations were ones of *exclusion* belies any contention that by including the recitations Mary Budd intended to *convey* the fractions contained therein (let alone *only* those fractions and nothing else). As such, we cannot say that the trial court's determination that the language of the handwritten recitations did not serve to delimit mineral rights was clearly erroneous. MCR 2.613(C); *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

We note and reject plaintiffs' argument that, by including such recitations in the mineral leases, Mary Budd thereby intended to "claim" only the fractional interests recited. First, the handwritten recitations do not *lease* anything; indeed, they *except* certain rights from the scope of the leases.[1] Second, although plaintiffs argue at great length that Mary Budd must be held to the exact descriptions in the leases, such argument is inapposite in that plaintiffs thereby fail to focus on the only question at issue for which the language of the mineral leases is purportedly relevant, i.e., whether the language was such as to fail to properly reserve mineral rights *pursuant to the DMA*. Indeed, nothing in the DMA requires such precision of description to which plaintiffs would hold defendants. First, although § 2 of the DMA does require a description of an interest claimed, MCL 554.292; MSA 26.1163(2), that section only applies when an owner seeks to preserve his claim of interest by so recording, MCL 554.291; MSA 26.1163(1). However, defendants do not rely on this provision in order to preserve their claims. Second, the purpose of the DMA is not to abolish severed mineral interests and vest title to such interests in the surface owner, but rather is to promote the development of such interests by reducing the problems presented by fragmented and unknown ownership. *Energetics, Ltd v Whitmill*, 442 Mich 38, 44; 497 NW2d 497 (1993); *Gibbs v Smock (On Rehearing)*, 195 Mich App 450, 453-454; 491 NW2d 614 (1992). Moreover, because the DMA converts "a corporeal hereditament which at common law could not be abandoned into an interest which is subject to abandonment," the DMA should thus be construed, so far as possible, to make the least rather than the most change in the common law. *Energetics, supra* at 51.

II

Plaintiffs also contend that the trial court incorrectly determined the actual fractional ownership of the mineral interests in question. We disagree. We initially note that the DMA provides for the reversion of severed mineral interests to the surface owner *no earlier than* the end of any twenty-year period of dormancy, or September 1, 1966, whichever is *later*. MCL 554.291; MSA 26.1163(1); *Energetics*, *supra* at 43-44.[2] Thus, given that the mineral interests in question were severed in 1949, the owners had until *at least* 1969 to act to initially preserve such, and did so by both the initiation (in 1951 to 1952) and expiration (in 1961 to 1962) of the mineral leases. *Energetics*, *supra* at 48. Furthermore, the 1961 to 1962 expirations of each of the mineral leases began a new twenty-year dormancy period that was in turn interrupted by further leases in 1976, which began a new twenty-year

period that was ongoing at the time plaintiffs brought this action. As such, the trial court correctly determined that defendants' mineral interests had been properly preserved pursuant to the DMA.

We further note and reject plaintiffs' argument that it was necessary for all defendants to have *personally* acted to preserve their current mineral interests. Nothing in the DMA requires that, in order to preserve a mineral interest, the *owner* thereof must act in every case. Rather, of all the contemplated preservation activities referred to in the DMA, only the recording of a "claim of interest" necessarily requires the owner to act. MCL 554.291; MSA 26.1163(1); *Energetics*, *supra* at 43-44. To the extent that this Court's opinion in *Wagner v Dooley*, 90 Mich App 759, 765-766; 282 NW2d 469 (1979), holds to the contrary, we decline to follow this holding in light of the language of the DMA and the fact that *Wagner* was decided before *Energetics*. See also *id*. at 54.

Affirmed. Defendants being the prevailing parties, they may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Michael R. Smolenski

[1] We also note that plaintiffs do not attempt to explain *why* Mary Budd would have seemingly so deserted a large portion of her mineral rights, as plaintiffs claim she did.

[2] To the extent plaintiffs contend that defendants' mineral rights were automatically abandoned on September 1, 1966 absent proper prior preservation, plaintiffs read § 1 of the DMA incorrectly. It is therefore of no consequence that the trial court chose to initially set forth its determination of ownership interests as of September 6, 1963 as an aid to the reader's understanding, i.e., the trial court took a sensible, chronological approach to its analysis of the chain of title to the SW¼.