[Cite as *Datkuliak v. Wheeler*, 2019-Ohio-4091.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MONROE COUNTY

MICHAEL C. DATKULIAK,

Plaintiff-Appellant,

v.

LETA O. WHEELER ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 18 MO 0003

Civil Appeal from the
Court of Common Pleas of Monroe County, Ohio
Case No. 2013-351

BEFORE:
Gene Donofrio, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:
Reversed and Remanded

Atty. Richard Yoss and Atty. Jason Yoss, Yoss Law Firm, 122 North Main Street, Woodsfield, Ohio 43793 for Plaintiff-Appellant, and

Leta O. Wheeler et al., PRO SE, (NO BRIEF FILED) for Defendants-Appellees.

Dated:
September 23, 2019

Donofrio, J.

{¶1} Plaintiff-appellant, Michael Datkuliak, appeals the judgment of the Monroe County Common Pleas Court granting summary judgment in favor of defendants-appellees, Austin Wheeler and H.G. Wheeler, on his quiet title action concerning mineral rights.

{¶2} In November of 1937, Leta O. Wheeler, E.S. Wheeler, Sadie Wheeler, C.J. Wheeler, Lela Wheeler, and H.A. Wheeler transferred two plots of land totaling approximately 72 acres in Monroe County, Ohio (the property) to H.G. Wheeler and Verona Wheeler (the Wheeler deed). The Wheeler deed contained two separate reservations. The first reservation reads "[e]xcepting and reserving, however, all the coal in and underlying the above described tract of land together with the mining rights therefore as was conveyed in said coal deed, excepting the top vein." The second reservation reads "[e]xcept and reserving unto the grantors herein their respective interest in the oil and gas."

{¶3} In April of 1961, H.G. Wheeler and Verona Wheeler transferred their interest in the property to Bernard and Verna Smith (the Smith deed). The Smith deed contained the identical coal and oil and gas reservations as the Wheeler deed.

{¶4} Through conveyances that are not in the record, Charles and Clara Bartimus became the surface owners of the property. In February of 1993, Charles and Clara transferred their interest in the property to appellant (the Datkuliak deed).

{¶5} On September 12, 2013, appellant filed this action seeking to quiet his title to the property's minerals. Appellant sought to quiet title to the property's minerals through either the 1989 Dormant Mineral Act (DMA) or the Marketable Title Act (MTA).

{¶6} After discovery, both parties filed motions for summary judgment. On August 12, 2015, the trial court stayed this action until the Ohio Supreme Court issued its ruling in *Corban v. Chesapeake Exploration, L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089.

{¶7} After the Ohio Supreme Court issued its ruling in *Corban*, the trial court placed this matter back on active status. The parties then both filed amended motions for summary judgment as well as reply briefs in opposition to summary judgment.

{¶8} Appellant's amended motion for summary judgment argued that appellees' mineral interest was extinguished pursuant to the MTA. Appellant argued that his root of title, the Smith deed, created the reservation over 50 years before he filed this action and that none of the exceptions in the MTA preserved appellees' mineral interest.

{¶9} Appellees' amended motion for summary judgment argued that the MTA was inapplicable pursuant to *Corban* and that appellant had not satisfied the 2006 DMA procedure for declaring mineral interests abandoned. Alternatively, appellees' argued that appellant failed to satisfy the MTA because the Datkuliak deed specifically referenced their mineral reservation.

{¶10} Appellant's reply argued that nowhere in *Corban* did the Ohio Supreme Court preclude the use of the MTA to extinguish mineral reservations. Appellant's reply memo also argued that the MTA and the 2006 DMA are not in conflict with each and therefore, both are applicable to clearing land of outstanding mineral interests.

{¶11} On February 13, 2018, the trial court held that appellant did not satisfy the 2006 DMA. The trial court also held that the MTA and the 2006 DMA are in conflict and, as the specific statute, the 2006 DMA was the applicable law. The trial court granted appellees' motion for summary judgment and denied appellant's motion for summary judgment. Appellant timely filed this appeal on March 8, 2018. Appellant now raises one assignment of error.

{¶12} Appellant's sole assignment of error states:

> THE TRIAL COURT ERRED AS A MATTER OF LAW IN GRANTING DEFENDANTS-APPELLEES' AMENDED MOTION FOR SUMMARY JUDGMENT HOLDING THAT THE ATTEMPTED ABANDONMENT OF AN OIL AND GAS/MINERAL RESERVATION IS GOVERNED SOLELY BY THE PROVISIONS OF THE 2006 DORMANT MINERALS ACT (THE "DMA") AND ERRED BY *NOT* GRANTING PLAINTIFF-APPELLANT'S AMENDED MOTION FOR SUMMARY JUDGMENT BASED UPON APPLICATION OF THE OHIO MARKETABLE TITLE ACT (THE "MTA").

{¶13} Appellant makes numerous arguments concerning his sole assignment of error. First, appellant argues that the 2006 DMA and the MTA are coextensive and can both be applied in cases concerning unused mineral interests. Second, appellant argues that the MTA is applicable to mineral interests. Third, appellant argues that *Corban* does not preclude the use of the MTA to eliminate mineral interests.

{¶14} An appellate court reviews a trial court's summary judgment decision de novo, applying the same standard used by the trial court. *Ohio Govt. Risk Mgt. Plan v. Harrison*, 115 Ohio St.3d 241, 2007-Ohio-4948, 874 N.E.2d 1155, ¶ 5. A motion for summary judgment is properly granted if the court, upon viewing the evidence in a light most favorable to the nonmoving party, determines that: (1) there are no genuine issues as to any material facts; (2) the movant is entitled to judgment as a matter of law, and (3) the evidence is such that reasonable minds can come to but one conclusion and that conclusion is adverse to the opposing party. Civ.R. 56(C); *Byrd v. Smith*, 110 Ohio St. 3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 10.

{¶15} Summary judgment is appropriate when there is no genuine issue as to any material fact. A "material fact" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.,* 104 Ohio App.3d, 598, 603, 662 N.E.2d 1088 (8th Dist. 1995), citing *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

{¶16} Pursuant to the MTA, a person who has an unbroken chain of title of record to any interest in land for 40 years or more has a marketable record title to such interest. R.C. 5301.48. A "marketable record title" is defined as "a title of record, as indicated in section 5301.48 of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section 530.1.50 of the Revised Code." R.C. 5301.47(A). "Root of title" is defined as "that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date of forty years prior to the time when marketability is being determined." R.C. 5301.47(E). The effective date of the root of title is the date it was recorded. R.C. 5301.47(E).

{¶17} On December 13, 2018, the Ohio Supreme Court released its opinion in *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132. In *Blackstone*, the Ohio Supreme Court applied the MTA and concluded that an oil and gas royalty right in real property was properly preserved.

{¶18} The MTA does not differentiate between different types of interests; it applies to all interests and claims against real estate. *Pollock v. Mooney*, 7th Dist. No. 13 MO 9, 2014-Ohio-4435, ¶ 21. Therefore, the MTA can be used to preserve oil, gas, and mineral interests.

{¶19} Likewise, the 2006 DMA can be used to preserve oil, gas, and mineral interests or to have those interests declared abandoned. See generally *Greer v. Frye*, 7th Dist. No. 14 BE 0032, 2017-Ohio-4035.

{¶20} Because an oil and gas interest is subject to both the MTA and the DMA, the trial court erred in finding the MTA inapplicable in this case.

{¶21} Accordingly, appellant's sole assignment of error has merit and is sustained.

{¶22} For the reasons stated above, the trial court's judgment is hereby reversed and this matter is remanded to the trial court for further proceedings for the trial court to apply Ohio's MTA.

Waite, P. J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Monroe County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings for the trial court to apply the Ohio Marketable Title Act. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.