[Cite as *Pernick v. Dallas*, 2021-Ohio-4635.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

GEORGE K. PERNICK et al.,

Plaintiffs-Appellees,

v.

JASPER J. DALLAS et al.,

Defendants-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 JE 0011

Civil Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 18 CV 445.

BEFORE:
Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

Atty. Tracey Lancione Lloyd, LANCIONE, LLOYD & HOFFMAN LAW OFFICE CO. LPA, 151 W. Main Street, St. Clairsville Ohio 43950 for Plaintiffs-Appellees and

Joanne Dallas, *pro se*, 7739 Chalkstone Dr., Dallas, Texas 75248 for Defendants-Appellant.

Dated: December 13, 2021

Robb, J.

{¶1} Defendant-Appellant Joanne Dallas appeals the decision of the Jefferson County Common Pleas Court granting summary judgment for Plaintiffs-Appellees George and Norma Pernick. This case primarily involves the Marketable Title Act (MTA) and ownership of minerals, oil and gas, underlying property located in Jefferson County, Ohio. As to the MTA, the first issue raised is whether a mineral lease by the surface owner (not the alleged mineral holder) within the 40-year period can act as a saving event for Appellant. The second MTA issue concerns the 1962 deed and whether the language contains reference to a prior oil and gas reservation and whether it is a "proper" root of title. This appeal also raises DMA and slander of title arguments. As to the DMA, the trial court determined any arguments concerning the DMA were rendered moot due to its resolution of the MTA. Appellant argues the merits of the DMA on appeal and asks this court to resolve the issues in her favor. Appellant also asserted the trial court incorrectly determined the slander of title claims.

{¶2} For the reasons expressed below, the trial court's grant of summary judgment for Appellees is affirmed. Appellees' lease does not act as a saving event for Appellant. The 1962 deed is a proper root of title and does not reference the prior oil and gas reservation. Consequently, Appellant's mineral interest was extinguished under the MTA. This renders the application of the DMA irrelevant. Thus, all arguments concerning the DMA are moot and the trial court appropriately determined they were moot. The trial court also correctly dismissed Appellant's slander of title claims against Appellees.

Statement of Facts and Case

{¶3} Appellees acquired the property at issue in 1998. There was no oil and gas reservation language in the deed. However, in the chain of title there is a 1925 deed from Jasper and Mary Dallas to Fred Baumberger conveying the surface. That deed contains the following oil and gas reservation language:

> Also expecting and reserving unto the grantors, their heir and assigns, all other coal seame [sic], and all the oil and gas underlying the premises,

> together with the right to mine the same, however, the said grantor shall pay the grantees for any surface used for the mining or removing of the same, and to pay all damages to the surface, crops, and all other damage and expense that may be incurred in the mining or removing of either coal, oil, or gas, it is also stipulated that there shall be no drilling or opening of any kind within 200 feet of dwelling house or buildings on said premise, be the same more or less, but subject to all legal highways.

1925 Deed.

{¶4} Jasper Dallas died in 1932 survived by his wife and children. The inventory of the estate references the coal ownership, but does not reference the minerals. According to Appellees, the next of kin listed in the Jasper Dallas' Estate were all deceased in 2014 when they were attempting to have the minerals deemed abandoned. There was no record of any of the next of kin transferring or preserving the minerals.

{¶5} The parties agree the recorded July 5, 1962 deed (Cochran to Bell deed) in the chain of title is the root of title for purposes of the MTA. This deed contains no specific reference to an oil and gas reservation. Rather it states, "Being the same premises that were conveyed to the Union Loan and Savings Co. by Fred Baumberger and Wife by Deed dated February 25, 1932 and recorded at Volume 157, Page 107, of the Deed records of Jefferson County, Ohio." July 5, 1962 Deed. It is noted this 1962 deed contains language specifically identifying other reservations and prior coal reservations.

{¶6} Appellees entered into an oil and gas lease on March 8, 2002 with Belden and Blake Corporation. Over the next couple of years, they proceeded to enter into three more leases for the oil and gas underlying the property.

{¶7} In 2014, Appellees started the process of having the mineral estate deemed abandoned. In October 2018, Appellees filed a complaint for quiet title of the mineral estate naming the following defendants - Jasper Dallas, Kay Marie Dallas Jewell, The Dallas Family Trust; Carol Palmer, Lois Ronish, Helen Bumgarner, Doris Calkins, Dean Dallas, Walton Dallas Jr., James Harlan, Thomas Harlan, Cory Snider, Phillip Harvey, Janet Yocum, Norman W. Dallas, Jr., David Boston, Cynthia Harlan, Thomas G. Dallas, Ralph Edenholm, Charlene Shephard, David Grout, Wayne Dallas, Ellen Castellini, Diana Houghton, Scott Busby, Marion Kennedy, Deborah Wellard, Sandra Dallas, Jerry Dallas,

Janet Kranz, Pamela Blankinship, James Dallas, Mary Babcock, Douglas Harlan, Karen Marasco, Geraldine Thomas, Deborah Albert, Edna Everett, John Dallas, Rodger Dallas, Linda Watry, Diana Millsap, James Cavallaro, Donald Dallas, Elaine Dallas, Deborah Mullins, Frances Yett, Marie Schruhl, Beverly Link, Kim Kamin, Sandra Cooley, and Martha Washington. 10/11/18 Complaint. The complaint also asserted a slander of title claim.

{¶8} Gulfport moved to intervene because it had entered into leases with persons whom it identified as potential heirs of Jasper and Mary Dallas. 12/13/18 Motion to Intervene. The motion was granted. 12/13/18.

{¶9} Later, more potential heirs were identified and joined. This included Appellant. Eventually all potential heirs, except for Appellant, entered into agreed entries quieting title for Appellees. 3/11/19 J.E.; 5/13/19 J.E.; 5/30/19 J.E.; 10/18/19 J.E.; 1/6/20 J.E.; 1/22/20 J.E.

{¶10} Appellant filed an answer and filed a cross-claim/counterclaim against Gulfport and Appellees. 4/18/19 Answer and Cross-Claim; 1/6/20 Amend [sic] Answer to Claim and Counterclaim. In her answer, she claimed the oil and gas lease entered between Appellees and the Belden and Blake Corporation was a saving event preventing the automatic extinguishment under the MTA. As to her claims against Appellees, she asserted they slandered her title to the mineral estate.

{¶11} Appellees filed a motion for summary judgment asserting they are the owners of the mineral estate because the minerals were either forfeited under the MTA and/or abandoned under the DMA. 12/27/19 Motion for Summary Judgment.

{¶12} Appellant also filed a motion for summary judgment. She agreed the root of title is the 1962 deed. However, she contended Appellees' oil and gas lease with Belden and Blake Corporation on March 8, 2002 occurred within the 40 year period and acted as a saving event. She also cited to the later three leases Appellees entered. 1/30/20 Appellant Motion for Summary Judgment.

{¶13} Appellees responded to the motion for summary judgment asserting the minerals were both abandoned under the DMA and extinguished under the MTA. 2/20/20 Appellees Motion in Opposition to Summary Judgment.

{¶14} Thereafter, Gulfport requested and a stay was granted due to the Ohio Supreme Court accepting an MTA vs. DMA case, *West v. Bode*. 2/20/20 Motion; 2/20/20 J.E.

{¶15} In November 2020, Gulfport filed a suggestion of bankruptcy. 11/24/20 Motion.

{¶16} In December 2020, Appellees filed supplemental authority – the decision of the Ohio Supreme Court in *West v. Bode*. 12/14/20 Supplemental Authority. The trial court lifted the stay in February 2021.

{¶17} In March 2021, the trial court issued a stay due to the bankruptcy proceedings by Gulfport. However, the stay only applied to the claims against Gulfport; the trial court indicated the case would proceed on the claims of Appellant and Appellees against each other. 3/8/21 J.E.

{¶18} Appellant filed her response to Appellees' motion for summary judgment on March 25, 2021. A hearing on the summary judgment motions was held on March 31, 2021. At the hearing, the parties agreed the 1962 deed was the root of title.

{¶19} The trial court granted summary judgment for Appellees. It reasoned:

> Defendant points out that certain oil and gas leases were executed during the forty (40) years Marketable Title period. She points out that oil and gas leases are Title transactions and she is correct about that. The problem for Defendant is two-fold. First, these leases were all signed by Plaintiffs. The bigger problem is that none of those leases contained a specific, general or even an inkling of the reservation upon which Defendant relies. Defendant seems to think that because this lease affected the oil and gas that she claims that they count as a "reference." She is wrong. It's the reference to the exception itself that is important. While these leases do affect the oil and gas, they make no reference whatsoever to the exceptions.
>
> Defendant seems to think that Pernick's Root of Title is flawed because the Deed did not specifically purport to convey to anyone in their chain of Title the interest they claim to own. What Defendant may not understand is that the Root of Title Deed, and all Deeds, convey the entire interest absent

express exceptions and reservations. For this reason, Plaintiff's Root of Title Deed did indeed convey the oil and gas interest as part of the whole even without specific mention of the oil and gas.

Defendant claims the Plaintiffs' Root of Title Deed is defective because it contains the following language:

> "Being the same premises that were conveyed to the Union Loan and Savings Co. by Fred Baumberger and Wife by Deed dated February 25, 1932 and recorded at Volume 157, Page 107, of the Deed records of Jefferson County, Ohio."

Defendant's point seems to be that this language limits the granting clause to only that which was owned by the Baumbergers in 1932 which would not include the oil and gas that was reserved in 1925. She cites the Seventh Appellate District case, Stalder vs. Bucher, 2019-Ohio-936, in support of her proposition. However, in that case the Deed to which the purported Root referred specifically mentioned the exception by volume and page. That is not the case here. The Baumberger Deed to Union Loan and Savings Co. made no reference to the oil and gas reservation at issue here." 4/6/21 J.E.

{¶20} The trial court determined since all issues were resolved under the MTA, the claims based on the DMA were moot and would not be addressed. 4/6/21 J.E. It further held Appellant's claims of slander of title were meritless because Appellees owned the oil and gas and there was no title to slander. 4/6/21 J.E. The trial court quieted title to Appellees and ordered counsel for Appellees to prepare the judgment entry. 4/6/21 J.E. A judgment entry containing similar language to the above was issued. 4/21/21 J.E.

{¶21} In June 2021, Gulfport requested dismissal of the claims against it by Appellant due to the Bankruptcy Court orders. 6/3/2021 Motion. After Gulfport filed the bankruptcy plan with the trial court, the trial court dismissed the claims against Gulfport due to the bankruptcy order. 6/17/21 J.E.

{¶22} Appellant filed a timely notice of appeal from the trial court's April 21, 2021 order. 5/11/21 Notice of Appeal.

Assignment of Error

"The trial court erred as matter of law when it granted Plaintiffs' motion for summary judgment based on the MTA and when it overruled Dallas' motion for summary judgment on all issues."

{¶23} The sole assignment of error incorporates MTA, DMA, and Slander of Title arguments asserting the trial court incorrectly granted summary judgment for Appellees.

{¶24} We review a trial court's grant of a summary judgment de novo. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, ¶ 24. Summary judgment is appropriate when (1) there is no genuine issue of any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) the evidence submitted can only lead reasonable minds to a conclusion which is adverse to the nonmoving party. Civ.R. 56(C); *Zivich v. Mentor Soccer Club, Inc*., 82 Ohio St.3d 367, 369-370 (1998).

{¶25} With that standard in mind, the MTA, DMA, and Slander of Title arguments will be addressed separately.

MTA

{¶26} Appellant asserts three separate arguments regarding the MTA. At the outset, it is observed, the Ohio Supreme Court recently explained:

> The General Assembly enacted Ohio's Marketable Title Act, R.C. 5301.47 et seq., in 1961 to extinguish stale interests and claims in land that existed prior to the root of title, with "the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title," R.C. 5301.55. The legislation provides that marketable record title—an unbroken chain of title to an interest in land for 40 years or more, R.C. 5301.48—"shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title." R.C. 5301.50. Marketable record title therefore "operates to extinguish" all other prior interests. R.C. 5301.47(A).

Erickson v. Morrison, __ Ohio St.3d ___, 2021-Ohio-746, __ N.E.3d ___, ¶ 16.

{¶27} With that principle in mind, each of the three arguments will be addressed separately.

1. Appellee's Oil and Gas Lease – "Plaintiffs MTA claims fail because there were recorded R.C. 5301.49(D) title transactions recorded less than 40 years after Plaintiffs' root of title deed."

{¶28} Appellant admits the 1962 deed is the root of title. Appellant contends the oil and gas leases entered between Appellees and companies constitutes a saving event for purposes of the MTA. One of the leases was entered within 40 years of the 1962 deed. Appellant contends this lease constituted a saving event preventing extinguishment.

{¶29} Appellees disagree and contend the trial court was correct in its reasoning:

> Defendant points out that certain oil and gas leases were executed during the forty (40) years Marketable Title period. She points out that oil and gas leases are Title transactions and she is correct about that. The problem for Defendant is two-fold. First, these leases were all signed by Plaintiffs. The bigger problem is that none of those leases contained a specific, general or even an inkling of the reservation upon which Defendant relies. Defendant seems to think that because these leases affected the oil and gas that she claims that they count as a "reference." She is wrong. It's the reference to the exception itself that is important. While these leases do affect the oil and gas, they make no reference whatsoever to the exceptions.

4/6/21 J.E.

{¶30} "The MTA extinguishes oil and gas rights by operation of law after 40 years from the effective date of the root of title unless a saving event preserving the interest appeared in the record chain of title, i.e., the interest was specifically identified in the muniments of title in a subsequent title transaction, the holder recorded a notice claiming the interest, or the interest arose out of a title transaction which has been recorded subsequent to the effective date of the root of title." *McCombs v. Dennis*, 5th Dist. Stark

No. 2020CA00148, 2021-Ohio-1181, ¶ 10, citing *Peppertree Farms, LLC v. Thonen*, 5th Dist. Stark No. 2019CA00161, 2020-Ohio-3043, ¶ 51; R.C. 5301.48.

{¶31} In DMA cases, we have concluded a lease constitutes a title transaction as defined by R.C. 5301.47(F), which is applicable to the MTA. *Sharp v. Miller*, 2018-Ohio-4740, 114 N.E.3d 1285, ¶ 28 (7th Dist.); *Eisenbarth v. Reusser*, 2014-Ohio-3792, 18 N.E.3d 477, ¶ 18-30 (7th Dist.). Therefore, a lease could prevent extinguishment under the MTA.

{¶32} Here, the agreed root of title is the July 5, 1962 Deed. The oil and gas lease between Appellees and the Belden and Blake Corporation was entered March 14, 2002. Thus, it did occur within the forty-year period.

{¶33} However, there are two problems with the assertion the Belden and Blake Corporation lease preserves Appellant's mineral interest. First, Appellant was not a party to this lease and this lease purports to show Appellees' oil and gas interest, not the Dallas heirs' interest. Or in other words, there is no language in this lease referencing the Dallas heirs or even suggesting that anyone other than Appellees own the mineral interest. This is precisely what the trial court was explaining in its April 2021 judgment entries. Second, (given the 1962 deed is the agreed root of title), the Dallas heirs' interest did not extinguish until July 2002. Thus, when the lease was entered into between Appellees' and Belden and Blake Corporation, Appellees did not own the minerals. Thus, the lease was not a valid lease and even if it could constitute a preservation of Appellant's interest, it would not because it was not a valid title transaction.

{¶34} In a DMA case, an argument similar to the one Appellant asserts was made to this court and we found no merit with it for the above stated reasons:

> Appellants raise several reasons to support their contention that the trial court erroneously ruled their interest in the minerals was abandoned pursuant to the 2006 DMA. * * * Second, Appellants argue that two oil and gas leases entered into by the Millers are title transactions that constitute a saving event.
>
> * * *

A title transaction has been defined as "any transaction affecting title to any interest in land, which means that it is not limited to the transactions enumerated in the statute or to transactions that transfer an ownership interest." *Chesapeake Exploration, L.L.C. v. Buell*, 144 Ohio St.3d 490, 2015-Ohio-4551, 45 N.E.3d 185, ¶ 39. "In order for the mineral interest to be the 'subject of' the title transaction the grantor must be conveying that interest or retaining that interest." *Dodd v. Croskey,* 7th Dist. No. 12 HA 6, 2013-Ohio-4257, 2013 WL 5437365, ¶ 48, affirmed on other grounds, *Dodd v. Croskey*, 143 Ohio St.3d 293, 2015-Ohio-2362, 37 N.E.3d 147. A recorded oil and gas lease is a title transaction, and constitutes a savings event under R.C. 5301.56(B)(3)(a). *Id.* at ¶ 66. According to Appellants, a lease constitutes a savings event regardless of whether the lessor is the surface owner or the interest holder. This issue is one of first impression in Ohio.

We are puzzled as to Appellants' claim that this lease would constitute a savings event for them, as they were never parties to this lease. Regardless, this particular lease cannot in any way be construed as a savings event. A person can only convey what he or she owns. *Short v. Short,* 4th Dist. No., 2014-Ohio-5864, 2014 WL 7739340, ¶ 28. The record is clear that the Millers did not own any mineral interests at the time they entered into a lease with EPC, as they had not yet initiated the abandonment process. Because the Millers did not hold an interest in the minerals in either 2005 or 2009, they had no rights or property they were able to convey in a lease. As the mineral interests at issue were not properly conveyed or retained, they cannot validly be the "subject of" a title transaction. As such, neither the 2005 nor 2009 oil and gas lease rises to the level of a savings event under R.C. 5301.56(B)(3)(a).

Sharp v. Miller, 2018-Ohio-4740, 114 N.E.3d 1285, ¶ 14, 27-28 (7th Dist.).

{¶35} Appellant's first argument under the MTA fails.

2. 1962 Deed – "Plaintiffs' MTA claims fail because the root of title deed conveyed the interest Baumberger owned, which specifically excluded the Dallas' minerals."

{¶36} Appellant's next argument is the 1962 deed (the root of title) preserves the interest. She contends the language of the 1962 deed indicates the oil and gas interest was not conveyed. She compares this case to our *Stalder v. Bucher* case.

{¶37} In *Stalder*, the question before our court was whether the reference to the oil and gas reservation in the root of title was specific and thus, the mineral interest was preserved under the MTA. *Stalder v. Bucher*, 7th Dist. Monroe No. 17 MO 0017, 2019-Ohio-936, ¶ 28-30. We utilized the three-part test set forth in the Ohio Supreme Court's *Blackstone* decision. *See Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, ¶ 11 ("The statute presents a three-step inquiry: (1) Is there an interest described within the chain of title? (2) If so, is the reference to that interest a 'general reference'? (3) If the answers to the first two questions are yes, does the general reference contain a specific identification of a recorded title transaction? Here, the answer to the first question is yes: the 1969 deed that constitutes the root of title recites that it is subject to the royalty interest. Thus, we turn to the second question: is the reference a 'general reference'?").

{¶38} The deed in *Stalder* contained the following language:

> And being the same premises that were conveyed to Anna S. Winkler by Godfrey Winkler, widower, by deed dated January 18, 1946, and recorded in the recorder's office of Monroe County, Ohio, in deed book no. 118, at page 201, as instrument number 78263. The said Anna S. Winkler having heretofore died intestate, left as her heirs at law, with the respective spouses of such of them as are married, the grantors herein. But excepting and reserving, however, unto the grantors, their heirs and assigns, all of the oil, gas, coal and all other minerals of a similar or dissimilar nature on, within and underlying the above three tracts of land, together with all of the leasing and mining rights and privileges belonging thereto.

Stalder at ¶ 28-29.

{¶39} Considering the language under the three-part test, we determined the answer to the first question – Is the interest described? – was yes. *Id*. at ¶ 30. "[T]he 1956 deed that constitutes the root of title states that it is subject to the oil, gas, and mineral reservation." *Id*. Consequently, we moved to the second question of whether the reference was general or specific. *Id*.

{¶40} In the case at hand, the 1962 deed, describing the second tract of land states:

> * * *, also a small piece of land sold and conveyed to T.J. Stringer for a right of way by deed dated December 6th, 1906 and also excepting and reserving the No. 8 or Pittsburgh vein of coal as previously sold. Also excepting and reserving from the above described tract the premises conveyed to Joseph and Emma DeLuca by deed dated Sept. 28, 1943 recorded in Deed Book 194 page 321 of the records of Jefferson County, Ohio.
>
> Being the same premises that were conveyed to the Union Loan & Savings Co. by Fred Baumberger & wife by deed dated February 25th, 1932 and recorded in Vol. 157 page 107 of the Deed Records of Jefferson County, Ohio. And also conveyed by the Union Loan & Savings Company to Quincy C. Cochran and Cora M. Cochran Deed Recorded in Vol. 212 Page 311. And also conveyed to Commissioner's Deed from Quincy C. Cochran, deceased to Cora M. Cochran, Recorded in Volume 303 Page 592 of the Deed Records of Jefferson County, Ohio.
>
> Excepting and making reservations as to all former Coal Deeds, heretofore made and recorded against this property.

1962 Deed.

{¶41} As can be seen, this deed does not contain any explicit reference to any prior oil, gas, or mineral reservation even though it contains multiple explicit references to other reservations, including coal reservations. Thus, the answer to the first *Blackstone* question is no; the oil and gas reservation is not described. For purposes of the MTA, the

Dallas' heirs' oil and gas mineral interest was not preserved in the 1962 deed (rather that deed purported to convey that interest to the grantee).

{¶42} Consequently, *Stalder* is inapplicable in this case because the second *Blackstone* question is not reached. Appellant's argument to the contrary is meritless; we hold the 1962 Deed did not preserve the interest.

3. 1962 Deed – "Plaintiffs' MTA claims fail because the root of title deed does not purport to convey any interest in Dallas' minerals."

{¶43} Appellant argues the failure to mention the oil and gas interest in the 1962 deed means it is not a "proper" root of title. She asserts it cannot be a "proper" root of title because it is not purporting to create the interest Appellees are claiming. She cites to the definition of root of title.

{¶44} 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 5301.50 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).

{¶45} The 1962 deed is the "proper" root of title. Despite Appellant's insistence to the contrary, the 1962 deed does purport to create the interest Appellees are claiming. The deed makes no reference to any oil and gas reservation or exception. Accordingly, the deed conveyed that interest to the grantee and as no deed or instrument in the chain of title set forth the earlier oil and gas reservation for 40 years, the Dallas' heirs' oil and gas interest was extinguished under the MTA and the interest reunited with the surface. The trial court adequately explained this:

> Defendant seems to think that Pernick's Root of Title is flawed because the Deed did not specifically purport to convey to anyone in their chain of Title the interest they claim to own. What Defendant may not understand is that the Root of Title Deed, and all Deeds, convey the entire interest absent express exceptions and reservations. For this reason, Plaintiff's Root of

> Title Deed did indeed convey the oil and gas interest as part of the whole even without specific mention of the oil and gas.

4/6/21 J.E. *See also* 4/21/21 J.E.

{¶46} Appellant's argument that the 1962 deed is not a "proper" root of title is meritless.

{¶47} For the above reasons, all MTA arguments are without merit.

DMA

{¶48} As explained above, the trial court granted summary judgment on the basis of the MTA and determined its decision rendered the DMA arguments moot. Accordingly, it did not address the DMA arguments.

{¶49} Appellant asserted multiple arguments concerning the DMA on appeal. They are as follows:

> "Plaintiffs' DMA process failed because the notice failed to notify each and every holder and the holder's successors and assigns of Plaintiffs' attempt to abandon the Dallas' minerals."
>
> "Plaintiffs' DMA process failed because published notice abandoned only the Wheeling and Lake Erie Coal Mining Company mineral inters, not the Dallas' mineral interest."
>
> "Plaintiffs' DMA process failed because the published notice identified Belmont County as the county in which they will file their affidavit of abandonment, not Jefferson County."
>
> "Plaintiffs' DMA process failed because Plaintiffs did not conduct a due diligence search for Dallas heirs before resorting to notice by publication."
>
> "Plaintiffs' DMA process failed because there were title transactions recorded less than 20 years prior to the DMA filings that prevented abandonment of Dallas' minerals."

Appellant's Brief.

{¶50} As has been discussed in many cases, a previously severed mineral estate can be reunited with the surface estate by use of either the DMA or the MTA. Surface owners can show abandonment under the DMA or extinguishment under the MTA. Surface owners do not need to show both to prevail, rather they must only show one. Once abandonment is proven, any arguments as to extinguishment are moot and vice versa.

{¶51} Here, the trial court found extinguishment under the MTA was proven. Accordingly, it determined the above issues regarding the DMA (which were also raised to the trial court) were moot and did not address them. This determination was correct. The Tenth Appellate District has aptly explained why courts decline to address moot issues:

> As a general matter, this court will not resolve issues that are deemed moot. "'The doctrine of mootness is rooted in the "case" or "controversy" language of Section 2, Article III of the United States Constitution and in the general notion of judicial restraint.'" *Bradley v. Ohio Dept. of Job and Family Svcs.,* 10th Dist. No. 10AP-567, 2011-Ohio-1388, ¶ 11, quoting *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 791 (1991). It is well-established law in Ohio that a court does not have jurisdiction over a moot question. *Id.* An action is deemed moot when "they are or have become fictitious, colorable, hypothetical, academic or dead. The distinguishing characteristic of such issues is that they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations." (Internal quotations omitted.) *Doran v. Heartland Bank,* 10th Dist. No. 16AP-586, 2018-Ohio-1811, ¶ 12. "'It is not the duty of a court to decide purely academic or abstract questions.'" *Id.* at ¶ 13, quoting *Keller* at 791.

Croce v. Ohio State Univ., Bd. of Trustees, 10th Dist. Franklin No. 20AP-14, 2021-Ohio-2242, ¶ 16.

{¶52} Consequently, given the trial court's decision regarding the MTA, it was correct in declining to address the DMA issues.

{¶53} As stated above, the trial court's decision regarding the MTA was correct. This means the DMA issues are moot and this court will not address them.

Slander of Title

{¶54} Appellant asserts, "Plaintiffs' claims against Dallas for slander of title had no factual or legal support."

{¶55} Although Appellees argued in their summary judgment motion that they should be granted summary judgment on their slander of title claims, they did not set forth any evidence of monetary damages. Rather, they merely requested title to the oil and gas be quieted in their name. Then at the summary judgment hearing, Appellees abandoned their slander of title claim:

> MS. DALLAS: What about the slander of title claims?
>
> THE COURT: Well, we haven't discussed that, but if Plaintiffs own the oil and gas, is there something we should address on the slander of title? I can't imagine what that would be.
>
> MS. LANCIONE LLOYD [Appellees' Counsel]: No, your Honor.
>
> THE COURT: Because if Plaintiffs own the oil and gas --

3/31/21 Summary Judgement Hearing Tr. 18-19.

{¶56} The trial court's April 2021 judgment entries did not grant summary judgment to Appellees on their slander of title claim. Consequently, since the claim was abandoned and there was no ruling on it, there is no issue for this court to decide regarding Appellees' slander of title claim against Appellant.

{¶57} The trial court, however, did dismiss Appellant's slander of title claim against Appellees on the basis of its determination that Appellees, not Appellant, owned the interest.

{¶58} As stated above, the trial court's MTA ruling was correct. Therefore, its dismissal of Appellant's slander of title claim was correct. In order for her to be entitled to damages on a slander of title claim, she had to be the owner of the property. *See Cuspide Properties, Ltd. v. Earl Mechanical Servs.*, 2015-Ohio-5019, 53 N.E.3d 818, ¶

36 (6th Dist.) ("To prevail on a slander of title claim, the claimant must prove '(1) there was a publication of a slanderous statement disparaging claimant's title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages.' *Green v. Lemarr,* 139 Ohio App.3d 414, at 430-431, 744 N.E.2d 212 [(2d Dist.2000)]." Therefore, the trial court properly dismissed Appellant's slander of title claims against Appellees.

Conclusion

{¶59} For the above stated reasons, the sole assignment of error is meritless. The trial court's grant of summary judgment for Appellees is affirmed in all respects.

Donofrio, P J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.