

[Cite as *Bayes v. Sylvester*, 2017-Ohio-4033.]

STATE OF OHIO, MONROE COUNTY  
IN THE COURT OF APPEALS  
SEVENTH DISTRICT

DONALD W. BAYES, ET AL.,	)	
	)	
PLAINTIFFS-APPELLANTS,	)	
	)	CASE NO. 13 MO 0020
V.	)	
	)	OPINION
S. TODD SYLVESTER, ET AL.,	)	
	)	
DEFENDANTS-APPELLEES.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas of Monroe County, Ohio Case No. 2013-087

JUDGMENT: Affirmed

APPEARANCES:  
For Plaintiffs-Appellants Attorney James Huggins  
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JUDGES:  
Hon. Gene Donofrio  
Hon. Cheryl L. Waite  
Hon. Carol Ann Robb

Dated: May 25, 2017

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DONOFRIO, J.

{¶1} Plaintiffs-appellants, Donald and Kathy Bayes, appeal from a Monroe County Common Pleas Court judgment granting summary judgment in favor of defendants-appellees, S. Todd Sylvester and Scott Sylvester, on appellants' action for declaratory judgment and to quiet title to an oil and gas royalty interest.

{¶2} On November 24, 1987, G. Jack and Robin Sylvester conveyed 53 acres of property in Monroe County (the Property) to appellants. The deed contained the following reservation:

RESERVING UNTO GRANTORS HEREIN FROM ABOVE THREE (3)  
PARCELS ONE-HALF (1/2) OF ANY REMAINING OIL AND GAS  
ROYALTY UNDERLYING THE PREMISES

(the Royalty Interest). Appellants have owned the property since the 1987 conveyance. Appellees are the heirs of G. Jack and Robin Sylvester.

{¶3} On February 2, 2012, appellants published a Notice of Abandonment of Mineral Interest in *The Monroe County Beacon*.

{¶4} On March 12, 2012, appellants recorded an Affidavit of Abandonment.

{¶5} On March 23, 2012, appellees filed Claims to Preserve a Mineral Interest.

{¶6} On March 7, 2013, appellants filed a complaint for declaratory judgment and to quiet title to the Royalty Interest. They sought a declaration that the Royalty Interest had been deemed abandoned and vested in them.

{¶7} Appellees filed a counter claim asking the court for a declaratory judgment that they are the rightful owners of the Royalty Interest and to quiet title in their names.

{¶8} Appellants filed a motion for summary judgment on all claims asserting the Royalty Interest had been abandoned under Ohio's Dormant Mineral Act (ODMA).

{¶9} Appellees also filed a motion for summary judgment asserting that the Royalty Interest has been preserved by way of four title transactions in the 20 years preceding the Notice of Abandonment, that appellants failed to serve them by

certified mail, and that they preserved the Royalty Interest by filing a Notice of Preservation.

{¶10} The trial court granted summary judgment in appellees' favor. It found that, pursuant to this court's decision in *Dodd v. Croskey*, 7th Dist. 12 HA 6, 2013-Ohio-4257, appellees filed a preservation notice in accordance with R.C. 5301.56(H)(1) that prevented the Royalty Interest from being deemed abandoned. The court found the other arguments were moot.

{¶11} Appellants filed a timely notice of appeal on December 24, 2013. This court held the appeal in abeyance pending the Ohio Supreme Court's decisions in several oil and gas cases. This case is now ready for review.

{¶12} Appellants raise a single assignment of error. Appellants' assignment of error states:

THE TRIAL COURT ERRED IN GRANTING DEFENDANTS-  
APPELLEES' MOTION FOR SUMMARY JUDGMENT.

{¶13} In reviewing a trial court's decision on a summary judgment motion, appellate courts apply a de novo standard of review. *Cole v. Am. Industries & Resources Corp.*, 128 Ohio App.3d 546, 552, 715 N.E.2d 1179 (7th Dist.1998). Thus, we shall apply the same test as the trial court in determining whether summary judgment was proper. Civ.R. 56(C) provides that the trial court shall render summary judgment if no genuine issue of material fact exists and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *State ex rel. Parsons v. Flemming*, 68 Ohio St.3d 509, 511, 628 N.E.2d 1377 (1994). 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).

{¶14} Appellants argue there are two separate ways that an abandonment can occur under the ODMA. One way, they assert, is if the severed mineral interest

holder fails to file anything under R.C. 5301.56(H)(1), then an abandonment may be completed by way of the non-judicial procedure described in R.C. 5301.56(H)(2). The other way, appellants assert, can occur whether or not the severed mineral interest holder makes a filing under R.C. 5301.56(H)(1). Appellants contend abandonment can occur under R.C. 5301.56(B) where there is a satisfaction of the requirements of R.C. 5301.56(E) and none of the circumstances described in R.C. 5301.56(B)(1) through (3) apply. They assert, based on the statute's plain meaning, there can be no savings event under R.C. 5301.56(B)(3) after the surface owner has satisfied R.C. 5301.56(E)'s requirements.

{¶15} Appellants further contend that the trial court misunderstood and misapplied this court's *Dodd v. Croskey*, 2013-Ohio-4257, decision. They state that in *Dodd*, this court had to determine whether the R.C. 5301.56(H) procedure was effectively completed. In this case, however, appellants assert the Royalty Interest was abandoned and vested in them by virtue of R.C. 5301.56(E).

{¶16} The trial court relied on this court's decision in *Dodd*, 2013-Ohio-4257, in rendering its judgment. The trial court pointed out that in *Dodd*, we found that R.C. 5301.56 provided that within 60 days of service or publication of notice of the surface owner's intent to have a mineral interest deemed abandoned, the holder of the mineral interest can claim that the interest has not been abandoned by filing either an affidavit or a claim. *Id.* at ¶ 19. The affidavit is governed by R.C. 5301.56(H)(1)(b), which provides that to preserve the interest the affidavit shall identify a savings event listed in R.C. 5301.56(B)(3) that has occurred within 20 years immediately preceding the date on which the notice was served or published. *Id.* at ¶ 20. A savings event automatically establishes that a mineral interest has not been abandoned. *Id.* The claim is governed by R.C. 5301.56(H)(1)(a), which provides that the claim shall be made in accordance with R.C. 5301.56(C). *Id.* at ¶ 21. That section sets out the information to be included in the claim and states that it must be filed within 60 days after the date of notice. *Id.*

{¶17} The trial court, continuing to cite our decision in *Dodd*, stated that filing a preservation notice (a claim) under R.C. 5301.56(H)(1)(a) allows for a present act

by the mineral holder that prevents the interest from being abandoned. *Id.* at ¶ 28. Based on this, the trial court found that appellees timely filed a claim to preserve a mineral interest on March 23, 2012, which was within 60 days of the notice published on February 2, 2012. Thus, the trial court concluded appellees preserved their royalty interest.

{¶18} The Ohio Supreme Court accepted our *Dodd* case for review. Specifically, the Court was to consider “whether a mineral-interest holder's claim to preserve a mineral interest from being deemed abandoned in accordance with R.C. 5301.56(H)(1)(a) is sufficient to preserve that interest if the claim was filed after notice of the surface owner's intent to declare the mineral interest abandoned and outside the 20-year window immediately preceding that notice.” *Dodd v. Croskey*, 143 Ohio St.3d 293, 2015-Ohio-2362, 37 N.E.3d 147. The court answered the question in the affirmative and affirmed this court's decision.

{¶19} On appeal to the Ohio Supreme Court, the *Dodd* appellants argued that the *Croskey* affidavit was not sufficient by itself to preclude abandonment because it was filed after the appellants' notice of abandonment was published. *Id.* at ¶ 23.

{¶20} In addressing this argument, the Court looked to the ODMA. It pointed out that before mineral interests can be vested in the surface owner, the surface owner must complete two tasks. *Id.* at ¶ 26, citing R.C. 5301.56(E). First, the surface owner must serve notice of the intent to declare the mineral interest abandoned on the mineral interest holders pursuant to the statutory requirements. *Id.*, citing R.C. 5301.56(E)(1). Then between 30 and 60 days after the notice is served or published, the surface owner must file and record an affidavit of abandonment that meets the statutory requirements. *Id.*, citing R.C. 5301.56(E)(2) and (G).

{¶21} The Court next reiterated that there are two ways for a mineral interest holder to assert that a mineral interest has not been abandoned after notice of abandonment: (1) the holder of the mineral interest can file a claim to preserve in accordance with R.C. 5301.56(H)(1)(a); or (2) the holder can file an affidavit that describes a savings event that occurred in the 20 years preceding the notice. *Id.* at

¶ 27. The Court also noted that a claim to preserve must meet R.C. 5301.56(C)'s requirements by: (1) stating the nature of the mineral interest claimed and any recording information upon which the claim is based; (2) complying with R.C. 5301.52; and (c) stating that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest. *Id.* at ¶ 28.

{¶22} The court then went on to hold:

Reading the statute as a whole, we conclude that *the plain language of the Dormant Mineral Act permits a mineral-interest holder's claim to preserve to serve two separate but similar functions depending on when it is filed for record: one as a saving event under R.C. 5301.56(B)(3)(e) when filed in the 20 years preceding notice and another to preclude the mineral interest from being deemed abandoned under R.C. 5301.56(H)(1)(a) when filed within 60 days after service of the surface owner's notice.* Nothing in the act states that a claim to preserve filed under R.C. 5301.56(H)(1)(a) must refer to a saving event that occurred within the preceding 20 years. Nor do the notice procedures in R.C. 5301.56(H)(1)(a) require that the claim to preserve be itself filed in the 20 years preceding notice by the surface owner. The statute plainly states that such a claim can be filed within 60 days after notice. R.C. 5301.56(H). Thus, to preserve the mineral holder's interests, the plain language of R.C. 5301.56(H) permits either a claim to preserve the mineral interest or an affidavit that identifies a saving event that occurred within the 20 years preceding notice.

(Emphasis added); *Id.* at ¶ 30.

{¶23} Following *Dodd*, the Ohio Supreme Court, relying on *Dodd* and on *Corban v. Chesapeake Exploration, L.L.C.*, \_\_ Ohio St.3d \_\_, 2016-Ohio-5796, \_\_ N.E.3d \_\_, affirmed this court's decision in *Farnsworth v. Burkhart*, \_\_ Ohio St.3d \_\_, 2016-Ohio-5816, \_\_ N.E.3d \_\_ ¶ 1.

{¶24} In a motion for reconsideration to the Ohio Supreme Court, the

Farnsworth appellants made the identical arguments appellants now make to this court. Specifically, the Farnsworth appellants argued that a claim to preserve filed pursuant to R.C. 5301.56(H)(1)(a) is not an occurrence under R.C. 5301.56(B) that prevents an abandonment because such a claim must be filed within the 20 years preceding the notice of abandonment. See Motion for Reconsideration of Appellants, Virgil Farnsworth and Theresa Farnsworth. The Ohio Supreme Court denied the motion for reconsideration. *Farnsworth v. Burkhart*, 147 Ohio St.3d 1439, 2016-Ohio-7677, 63 N.E.3d 157.

{¶25} This case is controlled by the Ohio Supreme Court's decision in *Dodd*. Here, appellants published a notice of abandonment on February 2, 2012. Thus, appellees had 60 days from that date to file either an affidavit or a claim of preservation. They timely filed a claim of preservation on March 23, 2012. By filing the claim of preservation within 60 days of publication of notice, appellees halted the abandonment process instituted by appellants. Thus, the trial court properly granted summary judgment in appellees' favor and found that appellees own the Royalty Interest at issue.

{¶26} Accordingly, appellants' sole assignment of error is without merit and is overruled.

{¶27} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

Robb, P.J., concurs.