[Cite as *Stalder v. Bucher,* 2017-Ohio-725.]

STATE OF OHIO, MONROE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DAVID STALDER, ANO	)	CASE NO. 14 MO 0010
	)	
PLAINTIFFS-APPELLEES	)	
	)	
VS.	)	OPINION
	)	
JOHN R. BUCHER, et al.	)	
	)	
DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Monroe County, Ohio Case No. 2013-234

JUDGMENT: Reversed and Remanded.

APPEARANCES:

For Plaintiffs-Appellees:

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JUDGES:

Hon. Cheryl L. Waite
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: February 27, 2017

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WAITE, J.

{¶1} Appellants John R. Bucher, Jan Bucher Carmichael, Fred L. May, Dale L. Binkley, Elizabeth Miller, Michael Vreeland, Susan Leach Swisher, Henry Carter Castilow, Sharon Castilow, and Brian Castilow collectively appeal a June 16, 2014 decision of the Monroe County Common Pleas Court to grant summary judgment in favor of Appellees David and Sherrie Stalder ("the Stalders"). Appellants' brief has been filed on behalf of the Heirs of Godfrey Winkler ("Winkler Heirs"). John R. Bucher is a Winkler Heir. The Winkler Heirs argue that the trial court erroneously applied the 1989 Dormant Mineral Act ("DMA") in this oil and gas lease dispute. Even if the 1989 DMA applied, the Winkler Heirs argue that the trial court erroneously determined that unreleased oil and gas leases are not "title transactions." Pursuant to *Corban v. Chesapeake Exploration, L.L.C.*, Slip Opinion No. 2016-Ohio-5796, the 1989 DMA does not apply in this matter and the judgment of the trial court is reversed. Appellant's remaining arguments are moot. However, as the trial court resolved this matter in summary judgment and there are other issues still in dispute, the matter is remanded for consideration of those issues.

Factual and Procedural History

{¶2} On February 21, 1946, Godfrey Winkler conveyed approximately 100 acres of land situated in Monroe County, Ohio to Anna S. Winkler. The deed contained the following reservation: "Excepting and reserving therefrom all oil and gas in and underlying said premises." (2/21/46 Deed, p. 2.) On September 13, 1950, Anna Winkler entered into an oil and gas lease with H.S. Shaffer, Jr. The lease was recorded on November 14, 1950. On February 24, 1956, the Winkler Heirs conveyed

the property by quitclaim deed to Glenn and Juanita Stalder. The deed contained the following reservation:

> 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.

(2/24/56 Deed, p. 2.) On July 2, 2001, Glenn and Juanita Stalder deeded the property to Appellees David and Sherrie Stalder. The deed was recorded on July 6, 2001.

{¶3} On May 15, 2013, the Stalders filed an affidavit pursuant to R.C. 5301.252 stating that the Winkler Heirs had abandoned their mineral interests in the property. The affidavit also asserted that the dormant mineral rights had vested in the Stalders because of the automatic and self-executing nature of the 1989 DMA. In response, the Winkler Heirs filed a claim to preserve their mineral interests pursuant to the 2006 DMA.

{¶4} Subsequently, on May 28, 2013, the Stalders filed a quiet title and declaratory judgment action. The complaint alleged that the Winklers abandoned their mineral interests pursuant to the 1989 DMA. The complaint did not address the 2006 DMA. On April 30, 2014, the Stalders filed a motion for summary judgment, arguing that the dormant mineral interests in the property vested in them pursuant to the 1989 DMA, before the 2006 DMA took effect. In the alternative, they argued that

the Winkler Heirs' interests were extinguished pursuant to the Marketable Title Act ("MTA"). The Winkler Heirs did not file a competing motion for summary judgment. On June 16, 2014, the trial court granted the Stalders' motion. The court found that the Winkler Heirs abandoned their rights under the 1989 DMA and did not address any other issue. This timely appeal followed.

Summary Judgment

{¶5} An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment using the same standards as the trial court, as set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" 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 (1995).

{¶6} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280,

296, 662 N.E. 2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id*. at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn*., 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

{¶7} The evidentiary materials that may be used to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

ASSIGNMENT OF ERROR NO. 1

> The Trial Court erred as a matter of law in granting Plaintiff-Appellees' Motion for Summary Judgment as the 2006 DMA properly controls resolution of disputes over severed mineral rights where litigation to assert those rights was filed after the 2006 DMA effective date.

ASSIGNMENT OF ERROR NO. 2

> The Trial Court erred as a matter of law in holding that the 1989 DMA was self-executing and automatic.

{¶8} The Winkler Heirs argue that the trial court erroneously ruled that the terms of the 1989 DMA were self-executing and automatic. Instead, the Winkler Heirs contend that the Stalders were required to comply with the requirements of the 2006 DMA, in effect at the time the Stalders filed their claim. As the Stalders did not comply with these requirements, the trial court's decision to grant summary judgment in favor of the Stalders is erroneous.

{¶9} In response, the Stalders contend that the 1989 DMA is self-executing and automatic, thus their interests in the dormant minerals vested prior to the effective date of the 2006 DMA. The Stalders contend that application of the 2006 DMA, here, would retroactively impact their right to the mineral interests at issue because their rights in the minerals had already vested.

{¶10} The Ohio Supreme Court has resolved this issue in *Corban, supra*. In *Corban*, the Ohio Supreme Court held:

> [A]s of June 30, 2006, any surface holder seeking to claim dormant mineral rights and merge them with the surface estate is required to follow the statutory notice and recording procedures enacted in 2006 by H.B. 288. These procedures govern the manner by which mineral rights are deemed abandoned and vested in the surface holder and apply equally to claims that the mineral interests were abandoned prior to June 30, 2006.

Id. at ¶ 31. *Corban* also held that the provisions within the 1989 DMA were not self-executing and did not serve to automatically transfer ownership rights of dormant minerals by operation of law. *Id.* at ¶ 28.

{¶11} As earlier discussed, the 2006 DMA became effective on June 30, 2006. The Stalders filed their claim on May 28, 2013. Pursuant to *Corban,* as the claim was filed after the effective date of the 2006 DMA, the Stalders were required to comply with the notice and recording statutes found within the 2006 DMA. While the Stalders contend that their mineral interests vested prior to the effective date of the 2006 DMA, the *Corban* Court clearly held otherwise. Based on *Corban*, the trial court erroneously ruled that the 1989 DMA applied, here. Accordingly, the Winkler Heirs' first and second assignments of error have merit and are sustained.

{¶12} However, because the Winkler Heirs did not file a competing motion for summary judgment, any ruling regarding the 2006 DMA in this matter would be premature. The trial court based its decision solely on its interpretation of the 1989 Act and did not undertake a factual review of any other issue in this matter. As such, the matter must be remanded to provide the trial court with an opportunity to address the 2006 DMA and any other issue that remains outstanding before the court.

ASSIGNMENT OF ERROR NO. 3

> The Trial Court erred as a matter of law in applying the 1989 DMA under an automatic and self-executing scheme as it is unconstitutional under Ohio's Constitution.

{¶13} The Winkler Heirs contend that the 1989 DMA is unconstitutional on at least two grounds. Because the 1989 DMA does not apply in this matter, the issue is moot.

ASSIGNMENT OF ERROR NO. 4

> The Trial Court erred in holding that unreleased oil and gas leases are not title transactions, if an automatic and self-executing scheme of the 1989 DMA is applied.

{¶14} The Winkler Heirs assert that, even if the 1989 DMA applies, the property is encumbered by valid and unreleased oil and gas leases and that these leases constitute a savings event under the 1989 DMA.

{¶15} The Stalders argue that the oil and gas leases at issue are not title transactions within the meaning of the 1989 Act. Regardless, the Stalders argue in the alternative that the Marketable Title Act ("MTA") can be used by a surface owner to acquire dormant mineral interests. The Stalders argue that the Winkler Heirs' interests were extinguished by the MTA because none of the five savings conditions preserved their interests.

{¶16} As earlier stated, the 1989 DMA does not apply in this matter. Also noted, the trial court did not rule on any other issue, including the Stalders' MTA arguments, and the Winkler Heirs did not file a competing summary judgment motion. Because issues of fact remain in the trial court, the matter is being remanded for that court to address any unresolved claim.

Conclusion

{¶17} The Winkler Heirs argue that the trial court's application of the 1989 DMA was erroneous. Pursuant to *Corban, supra,* these arguments have merit and the judgment of the trial court is reversed. The Winkler Heirs also argue that the 1989 DMA is unconstitutional. However, as the 1989 DMA does not apply, this issue is moot. For the same reason, Appellant's argument that oil and gas leases constitute a savings event is also moot. However, as competing motions for summary judgment were not filed, this matter is remanded to allow the trial court to apply the 2006 DMA and to consider any remaining issues.

DeGenaro, J., concurs.

Robb, P.J., concurs.