[Cite as *Book v. Arnold*, 2017-Ohio-7753.]

STATE OF OHIO, MONROE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STEPHEN R. BOOK, et al. PLAINTIFFS-APPELLEES	)	CASE NO. 14 MO 0017
VS.	)	OPINION
J. H. ARNOLD, et al. DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Monroe County, Ohio Case No. 2013-416

JUDGMENT: Reversed and Remanded.

APPEARANCES:

For Plaintiffs-Appellees:

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For Defendants-Appellants:

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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: September 18, 2017

[Cite as *Book v. Arnold*, 2017-Ohio-7753.]
WAITE, J.

{¶1} Appellants William Riley, Sr., Lina Riley, Elizabeth Allum, Benjamin Saffell, Jean Gaskins, Melba Henthorn, Raymond Saffell, Fredrick L. Riley, Sr., George W. Riley, Beverly Riley Kress, David L. Saffell, and Kathy Bonner appeal an August 26, 2014 decision of the Monroe County Common Pleas Court to grant summary judgment in favor of Appellees Stephen R. and Marlene A. Book. Appellants contend that the trial court erroneously applied the 1989 Dormant Mineral Act ("DMA") to this matter. Pursuant to *Corban v. Chesapeake Exploration L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089, Appellants are correct. Accordingly, Appellants' arguments have merit and the judgment of the trial court is reversed. The matter is remanded for consideration of the 2006 DMA and Appellees' Marketable Title Act ("MTA") claim, still pending in the trial court.

Factual and Procedural History

{¶2} This appeal concerns the ownership of a one-half royalty interest in minerals beneath thirty-six acres of land in Sunsbury Township, Monroe County. On May 14, 1903, Albert and Arminda Moore conveyed a one-half interest in the minerals to W.W. Blue. On June 11, 1903, Blue conveyed a one-fourth interest in his one-half interest to J.H. Arnold, William Riley, Sr., and J.M. Jeffers. Blue retained the remaining one-fourth interest for himself. Accordingly, Blue, Arnold, Riley, and Jeffers each owned 1/8 of a one-half interest in the royalty.

{¶3} On April 23, 1940, a certificate of transfer was issued following Blue's death. The certificate transferred Blue's one-eighth interest as follows: one-third to Lina Riley, one-third to Elizabeth Allum, and one-third to Elva Saffell. Elva Saffell

later died and her one-third interest was transferred as follows: one-third to Benjamin Saffell, two-ninths to Jean Gaskins, two-ninths to Melba Henthorn, and two-ninths to Raymond Saffell. At this point, the one-half interest was owned in part by J.H. Arnold, William Riley, Sr., J.M. Jeffers, Lina Riley, Elizabeth Allum, Benjamin Saffell, Jean Haskins, Melba Henthorn, and Raymond Saffell.

{¶4} On February 8, 1988, Appellants obtained the surface rights to the property. On August 8, 2011, a notice of preservation was filed on behalf of Fredrick L. Riley Sr., George W. Riley, Beverly (Riley) Kress, John D. Riley, and Kathy Bonner (heirs of Lina Riley). On August 9, 2011, David Saffell, sole heir of Elva Saffell, filed a notice of preservation. On November 7, 2011, Kathleen Bonner filed a notice of preservation. It appears that this is the same Kathy Bonner who was named in the August 8, 2011 claim of preservation.

{¶5} On October 25, 2013, Appellees filed a complaint against J.H. Arnold, J.M. Jeffers, John D. Riley and Appellants. The complaint sought declaratory judgment (pursuant to the 1989 DMA and MTA), quiet title, and slander of title.

{¶6} On December 2, 2013, Appellants' attorney filed an answer on behalf of all named defendants. However, the parties later entered into a stipulation where it was clarified that Appellants' attorney did not represent J.H. Arnold, J.M. Jeffers, George W. Riley, and John D. Riley. On June 30, 2014, the trial court granted Appellees' motion for default judgment against Arnold and Jeffers. On the same date, John D. Riley agreed that he had abandoned his interests pursuant to the 1989 DMA and was dismissed with prejudice in an agreed judgment entry. George W.

Riley's continued involvement with the lawsuit is unclear. It does not appear that Appellees sought default judgment against him or that he was otherwise dismissed as a defendant.

{¶7} On June 30, 2014, Appellees filed a motion for summary judgment arguing that Appellants had abandoned their interests pursuant to the 1989 DMA. In response, Appellees argued that the 1989 DMA was unconstitutional and the 2006 DMA applies to all claims after its effective date. On August 26, 2014, the trial court granted Appellees' motion. Although Appellees' complaint included an MTA claim, the parties did not address this claim within their respective motions for summary judgment. Appellees did not address the 2006 DMA other than to argue that it was inapplicable.

{¶8} This timely appeal followed. On December 4, 2014, we granted Appellants' motion to stay the appellate proceedings until the Ohio Supreme Court disposed of its DMA cases. It is noted that the parties' briefs were filed prior to the stay and no supplemental briefs have been filed by either party.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN APPLYING THE 1989 VERSION OF THE OHIO DORMANT MINERAL ACT TO THE SUBJECT CASE.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN DETERMINING THAT THE 1989 DORMANT MINERAL ACT "AUTOMATICALLY" VESTED THE MINERAL INTERESTS IN THE SURFACE OWNERS.

ASSIGNMENT OF ERROR NO. 3

> THE TRIAL COURT ERRED IN FAILING TO ADDRESS THE APPELLANTS' CLAIMS THAT THE 1989 DORMANT MINERAL ACT IS UNCONSTITUTIONAL IN THAT IT DENIES MINERAL OWNERS OF THEIR DUE PROCESS RIGHTS.

{¶9} Appellants contend that the trial court erroneously applied the 1989 DMA, as the complaint in this matter was filed after the effective date of the 2006 DMA. Appellants also argue that the 1989 DMA is unconstitutional as it violates due process. In response, Appellees cite to several appellate cases holding that the 1989 DMA operated to automatically reunite surface and mineral interests. However, these cases have since been overturned by the Ohio Supreme Court.

{¶10} The Ohio Supreme Court has 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.

Stalder v. Bucher, 7th Dist. No. 14 MO 0010, 2017-Ohio-725, ¶ 10, citing *Corban, surpa,* at ¶ 31. The Supreme Court 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. *Stalder* at ¶ 10, citing *Corban* at ¶ 28.

{¶11} The complaint in this matter was filed on October 25, 2013. Pursuant to *Corban*, the 2006 DMA controls. As such, the trial court erroneously applied the 1989 DMA. Appellants' first and second assignments of error are sustained. As the 1989 DMA does not apply, Appellants' constitutional arguments are moot. See *Stalder, supra.*

{¶12} The 2006 DMA requires a landowner seeking to reunite the surface and mineral rights to comply with the notice requirements of R.C. 5301.56(E). As noted, Appellees did not address the 2006 DMA in their motion for summary judgment, thus did not present any evidence as to whether they complied with the statute's notice requirements. As such, questions of fact remain as to whether Appellees complied with R.C. 5301.56(E).

Conclusion

{¶13} Appellants contend that the trial court erroneously applied the 1989 DMA. Pursuant to *Corban, supra,* Appellants are correct. Accordingly, the judgment of the trial court is reversed. However, the matter is remanded for consideration of the 2006 DMA and Appellees' MTA claim as questions of fact remain in regard to these claims.

Donofrio, J., concurs.

DeGenaro, J., concurs.