[Cite as *Harmon v. Capstone Holding Co.*, 2017-Ohio-4155.]

STATE OF OHIO, NOBLE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DANNY HARMON, et al. PLAINTIFFS-APPELLANTS VS. CAPSTONE HOLDING CO., et al. DEFENDANTS-APPELLEES AND ECLIPSE RESOURCES-OHIO, LLC DEFENDANT-APPELLANT	)	CASE NO. 14 NO 0413 OPINION

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Noble County, Ohio Case No. 213-0048

JUDGMENT: Affirmed.

JUDGES:

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

Dated: June 5, 2017

[Cite as *Harmon v. Capstone Holding Co.*, 2017-Ohio-4155.]
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WAITE, J.

{¶1} Appellants Eclipse Resources Ohio, LLC ("Eclipse"), and Danny and Karen Harmon, (collectively referred to as "Appellants") appeal a February 18, 2014 Noble County Common Pleas Court decision to grant summary judgment in favor of Appellee Capstone Holding Co. ("Capstone"). Appellants collectively argue that the trial court misapplied the 1989 Dormant Mineral Act ("DMA"). Pursuant to *Corban v. Chesapeake Exploration, L.L.C.*, __ Ohio St.3d __, 2016-Ohio-5796, __ N.E.3d __, and *Albanese v. Batman,* 148 Ohio St.3d 85, 2016-Ohio-5814, 68 N.E.3d 800, Appellants' arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This appeal concerns the ownership of mineral rights beneath 73.059 acres of land located in Beaver Township, Noble County. On October 28, 1971, Seaway Coal Company ("Seaway") conveyed the surface rights to Gilbert and Beulah LaFever. Seaway reserved and excepted the mineral rights through the following language: "EXCEPTING AND RESERVING from the above described [property] all of the coal of every vein and description and all other minerals, surface or sub-surface deposits, and oil and gas." (10/28/71 Deed) The deed was recorded on November 11, 1971.

{¶3} On June 17, 1974, the LaFevers conveyed the surface rights to J.C. and Sheryl LaFever. The deed referenced the Seaway reservation and was recorded on August 27, 1974. On December 28, 1979, the LaFevers conveyed the surface rights to Michael J. and Kathleen M. Billi. The Seaway reservation was again

referenced within the deed which was recorded on December 28, 1979. Seaway apparently dissolved its corporation sometime in 1979. On November 12, 1992, Seaway conveyed its interests to R&F Coal Company ("R&F") who later became Capstone.

{¶4} On May 2, 1994, the Billis conveyed the surface rights to the Harmons. The deed contained the Seaway reservation and was recorded on May 3, 1994. The Harmons later learned that Seaway had dissolved and, on August 25, 2008, served Seaway with notice of intent to declare its mineral interests abandoned pursuant to R.C. 5301.56(E)(1). Seaway failed to respond. Consequently, on September 26, 2008, the Harmons filed an affidavit of abandonment. On February 4, 2010, the Harmons entered into an oil and gas lease with Oxford Oil Company, who later became Eclipse. On January 12, 2012, Capstone filed an affidavit to preserve its interests pursuant to R.C. 5301.56(E)(2).

{¶5} On March 22, 2013, the Harmons filed a declaratory judgment and quiet title complaint against Capstone and Oxford Oil Co./Eclipse. Both parties filed an answer and Capstone filed a counterclaim asserting that the Harmons lacked standing to file the complaint. On November 20, 2013, the Harmons filed a motion for a judgment on the pleadings. On December 17, 2013, Capstone filed a combined motion for summary judgment and memorandum in opposition to the Harmons' motion. On February 18, 2014, the trial court granted Capstone's motion and denied the Harmons'. The trial court found that none of the parties in the action held an interest in the minerals. Instead, the court determined that pursuant to the 1989

DMA, the Billis were the mineral interest holders. The court alternatively ruled that if the 2006 DMA applied, the Harmons still could not succeed in their action as they failed to provide notice to interest holder of record in accordance with R.C. 5301.56(E)(2). Both the Harmons and Eclipse filed notices of appeal. Capstone filed a cross appeal which it later voluntarily dismissed. The remaining notices of appeal were consolidated.

Summary Judgment

{¶6} 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 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 (8th Dist.1995).

{¶7} "[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).

{¶8} The evidentiary materials 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*, *supra,* at 327.

APPELLANT ECLIPSE'S ASSIGNMENT OF ERROR NO. 1

> The trial court erred in finding that the 1994 warranty deed from Michael and Kathleen Billi to Plaintiffs Danny and Karen Harmon did not convey any oil and gas rights in the subject property to Plaintiffs.

APPELLANT ECLIPSE'S ASSIGNMENT OF ERROR NO. 2

> The trial court erred in finding that Plaintiffs Do Not Have Standing to Bring Suit for Declaratory Judgment and to Quiet Title in the Oil and Gas Interest in Dispute.

APPELLANTS DANNY & KAREN HARMONS' ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT COMMITTED ERROR WHEN IT RULED THE HARMONS HAD NO STANDING TO BRING THIS QUIET TITLE ACTION.

APPELLANTS DANNY & KAREN HARMONS' ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT IMPROPERLY APPLIED THE 1989 DORMANT MINERAL ACT.

{¶9} We note that the briefing schedule in this matter was completed prior to the Ohio Supreme Court's recent DMA decisions and no supplemental briefing was filed by either party. Each of the parties in this matter addressed the issues based on the presumption that the 1989 DMA applies.

{¶10} Appellants agree with the trial court's determination that the surface and mineral rights were reunited pursuant to the 1989 DMA, however, they dispute the trial court's findings. Appellants explain that although the Billis owned the property at the time the surface rights and mineral interests reunited, the Billis did not reserve an interest in the minerals before conveying the property to Appellants. While the Billis referenced the Seaway reservation in the deed, that reservation was no longer valid once those interests were abandoned and the inclusion of the reservation is insufficient to create an interest in favor of the Billis.

{¶11} In response, Capstone argues that the mineral interests were abandoned and automatically reunited with the surface on March 22, 1992 pursuant to the 1989 DMA. On that date, Capstone asserts that the Billis owned the property,

thus held the mineral interests and surface rights. Capstone argues that the Billis' inclusion of the Seaway reservation after the surface and mineral rights were reunited acted to create a new reservation in favor of the Billis. Capstone contends that the only remaining question is whether the Billis or Capstone, who obtained an interest in the minerals in 1992, holds current ownership of the mineral interests.

{¶12} As previously noted, the parties' arguments are predicated on the 1989 DMA. However:

> [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, quoting *Corban, supra*, ¶ 31.

{¶13} The *Corban* Court also held that the 1989 DMA was not self-executing and did not serve to automatically transfer ownership rights of dormant minerals by operation of law. Any attempt to declare mineral interests abandoned after June 30, 2006 must comply with the notice requirements of the 2006 DMA. *Stalder* at ¶ 10, citing *Corban* at ¶ 28. The Harmons' complaint was filed on March 22, 2013 and the

2006 DMA controls. Hence, the trial court's 1989 DMA analysis was improper. However, the court also provided an alternative ruling based on the 2006 DMA.

{¶14} The 2006 DMA is codified in R.C. 5301.56. Pursuant to R.C. 5301.56(E):

> (E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:
>
> (1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.
>
> (2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is

> located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

{¶15} Within its judgment entry, the court stated: "If Plaintiffs are relying on Revised Code 5301.56 effective 6/30/06, that reliance is misplaced. * * * When Plaintiffs attempted to give notice to the holder on 8/25/08, Seaway was not the record holder. Plaintiffs did not therefore comply with the statute." (2/18/14 J.E., pp. 2-3.)

{¶16} Appellants concede that they knew of Seaway's dissolution. Despite this knowledge, Appellants served Seaway with the notice of abandonment without first attempting to determine who had obtained Seaway's interests.

> In order for a severed mineral interest to be deemed abandoned and vested in the surface owner under the 2006 version of the ODMA, the owner of the surface rights must comply with R.C. 5301.56(E), which requires the surface owner to serve the mineral-interest holder with notice of the owner's intent to declare the mineral interest abandoned and to file an affidavit of abandonment in the county recorder's office in the county in which the property is located.

Albanese at ¶ 27. Appellants admittedly did not attempt to serve anyone other than Seaway.

{¶17} As Appellants failed to comply with the statutory notice requirements of R.C. 5301.56(E), the mineral interests remain with the record holder, Capstone. Because the 2006 DMA controls in this matter and Appellants failed to comply with

the statutory notice requirements, Appellants' arguments are without merit and the judgment of the trial court based on the 2006 DMA is affirmed.

Conclusion

{¶18} Appellants argue that the trial court misapplied the 1989 DMA. Pursuant to *Corban,* the 1989 DMA does not apply. However, the trial court alternatively ruled that the Harmons failed to comply with the notice requirements of the 2006 DMA. As the record reflects that Appellants did fail to comply with the statutory notice requirements, Appellants' arguments are without merit and the judgment of the trial court based on the 2006 DMA is affirmed.

Donofrio, J., concurs.

DeGenaro, J., concurs.