

[Cite as *Reed v. Ricer*, 2018-Ohio-861.]

STATE OF OHIO, MONROE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

|                           |   |                     |
|---------------------------|---|---------------------|
| WILLIAM REED II, et al.   | ) | CASE NO. 15 MO 0009 |
|                           | ) |                     |
| PLAINTIFFS-APPELLEES      | ) |                     |
|                           | ) |                     |
| VS.                       | ) | OPINION             |
|                           | ) |                     |
| JENNIFER L. RICER, et al. | ) |                     |
|                           | ) |                     |
| DEFENDANTS-APPELLANTS     | ) |                     |

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Monroe County, Ohio  
Case No. CVH 2014-015

JUDGMENT: Reversed and Remanded.

APPEARANCES:

For Plaintiffs-Appellees: Atty. Daniel P. Corcoran  
Atty. Kristopher O. Justice  
Theisen Brock, LPA  
424 Second Street  
Marietta, Ohio 45750

For Defendants-Appellants: Atty. John R Estadt  
Atty. Kyle W. Bickford  
Hanlon, Estadt, McCormick  
& Schramm Co., LPA  
46457 National Road West  
St. Clairsville, Ohio 43950

JUDGES:

Hon. Cheryl L. Waite  
Hon. Gene Donofrio  
Hon. Carol Ann Robb

Dated: March 5, 2018

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WAITE, J.

{¶1} Appellants, Jennifer L. Ricer, et al. appeal the trial court's decision to apply the 1989 version of the Dormant Mineral Act (“DMA”) to their dispute over mineral rights and grant summary judgment in favor of Appellees, William Reed, II, et al. Appellees agree, and the parties jointly argue that the trial court erroneously granted summary judgment in favor of Appellees based on the 1989 DMA. Pursuant to *Corban v. Chesapeake Exploration, L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089, the decision of the trial court is reversed and remanded for application of the 2006 DMA.

#### Facts and Procedural History

{¶2} This appeal concerns the ownership of mineral rights beneath 57.33 acres of land located in Sunbury Township, Monroe County. On September 29, 1934, Vernon Jeffers, Sara Jeffers, Letty Raddle, and Henry Raddle conveyed the surface rights to Lloyd Powell. The deed contained the following reservation: “The Grantors except and reserve for themselves their heirs and assigns, the undivided one-half of the oil and gas in and underlying the above described tracts of land.” (9/29/1934 Deed.) In 1984, Appellees obtained the surface rights to the property.

{¶3} On May 3, 2012, Appellees published notice of intent to declare the mineral interests abandoned. On May 9, 2012 and June 29, 2012, Appellees recorded an affidavit of abandonment. On June 27, 2012, Appellant Jennifer Ricer filed a claim of preservation on behalf of herself and the Jeffers and Raddle heirs.

{¶4} On January 10, 2014, Appellees filed a complaint against Appellants, who are heirs of the Jeffers and Powells. The complaint asserted that under either

the 1989 version of the DMA or the 2006 version, title in the severed mineral interest vested in Appellees. On December 8, 2014, Appellees filed a motion for partial summary judgment on their claim to quiet title under the 1989 version of the DMA. Appellants filed an answer but did not file a competing motion for summary judgment. On March 18, 2015, the trial court granted Appellees' motion for summary judgment pursuant to the 1989 version of the DMA. This timely appeal followed.

{¶15} On May 17, 2017, the parties filed a proposed agreed order reversing and remanding the case to the trial court. On May 30, 2017, we denied the proposed order, however, we granted the parties an extension to file briefs citing and discussing the legal basis for such an order. Appellants filed a brief relying on *Corban, supra*, and seeking reversal and remand. Appellees filed a brief agreeing with Appellants.

#### ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN APPLYING THE 1989 VERSION OF THE OHIO DORMANT MINERAL ACT (O.R.C. 5301.56) TO THE APPELLEES DECLARATORY JUDGMENT AND QUIET TITLE CLAIMS.

{¶16} The parties jointly argue that the decision of the trial court should be reversed and remanded to allow the trial court to consider the 2006 version of the DMA, pursuant to *Corban, supra*.

{¶17} The parties are correct. 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.

*Stalder v. Bucher*, 7th Dist. No. 14 MO 0010, 2017-Ohio-725, ¶ 10, quoting *Corban, supra*, at ¶ 31. The Supreme Court also held that the provisions set out in 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.

{¶8} Appellants filed their claim on January 10, 2014. Pursuant to *Corban*, as the claim was filed after June 30, 2006, the 2006 DMA controls, here. Thus, the trial court erred in granting summary judgment in favor of Appellees on the basis of the 1989 DMA.

#### Conclusion

{¶9} The parties jointly argue that the trial court erroneously granted summary judgment in favor of Appellees based on the 1989 DMA. Pursuant to *Corban, supra*, the parties are correct. Accordingly, the judgment of the trial court is reversed and remanded for application of the 2006 DMA.

Donofrio, J., concurs.

Robb, P.J., concurs.

