Oil and Gas Alert: Ohio Appeals Court Addresses Issues Related to the 1989 Version of Ohio DMA

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In *Walker v. Noon,* the Seventh District Court of Appeals recently addressed two issues concerning the 1989 version of the Ohio Dormant Mineral Act (DMA). In *Walker*, the Court of Appeals held:

> (1) for the purposes of the DMA, a severed mineral interest was not the "subject of" a title transaction that conveyed the surface with a restatement of a prior mineral reservation;
>
> (2) the 1989 version of the DMA automatically vested a surface owner with a severed mineral interest where no savings events occurred within the statute's look-back period, and that such vesting was not disturbed by the amendment of the DMA in 2006.

The Seventh District Court of Appeals covers Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble counties.

Background

The appellant (Noon) purchased a tract of land in Noble County in 1964. In 1965, Noon sold the surface of the property but reserved the mineral rights. Thereafter, the surface was transferred through conveyances in 1970 and 1977. The 1970 and 1977 conveyances repeated the mineral reservation and provided the volume and page number of the original reserving deed. The appellee (Walker) purchased the property in 2009. On December 2, 2011, Walker sent a notice of abandonment under the 2006 version of the DMA to Noon. On January 10, 2012, Noon filed a claim to preserve.

Holding

1. Whether the minerals were the "subject of" the 1970 and 1977 conveyances

Noon contended that the DMA did not require that the minerals be conveyed by a title transaction in order to be the "subject of" that title transaction. Because the 1970 and 1977 conveyances referenced the

1965 mineral reservation, Noon argued the minerals were the "subject of" such conveyances for purposes of the DMA.

The Court, citing its earlier decision in *Dodd v. Croskey* on the same issue, held that in order for the minerals to be "the subject of" a title transaction, "the grantor must be conveying or retaining that interest" and accordingly, "the mere mention of the mineral interest reservation in the 1970 and 1977 deeds did not make the mineral interest 'the subject of' the title transactions."

2. Whether the trial court erred in applying the 1989 version of the DMA instead of the 2006 version of the DMA

Next, the Court considered whether the 1989 version or the 2006 version of the DMA applied. Noon argued that the Court should apply the 2006 version of the DMA because that version of the statute was in effect when Walker acquired the property in 2009. Under the 2006 version, Noon argued, the timely recordation of his claim to preserve prevented the abandonment of the mineral interest.

The Court found that the 1989 version of the DMA applied. Because Noon's mineral interest was not preserved by a saving event, such interest was "vested" in the surface owner under the 1989 version of the statute on March 22, 1992. A "vested right," the Court found, is one that "so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent." Mineral rights deemed abandoned under the DMA "completely and definitely" belong to the surface owner. The Court held that after March 22, 1992, Noon no longer owned the mineral interest and any attempt at preserving such interest under the 2006 version of the DMA was ineffective.

Lastly, the Court rejected the reasoning of the trial court decision in *Dahlgren v. Brown Farm*, which found that that the 1989 version of the DMA did not apply automatically but instead created "an inchoate" right in the minerals which was terminated by the 2006 version of the DMA.

Vorys will continue to provide updates on new developments regarding the DMA. Questions relating to this issue may be addressed to Greg Russell (gdrussell@vorys.com), John Keller (jkeller@vorys.com), Tim McGranor (tbmcgranor@vorys.com) or Ilya Batikov (ibatikov@vorys.com).