

Publications

Oil and Gas Alert: Ohio Seventh District Ruling Addresses Ohio Dormant Mineral Act Application

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In *Eisenbarth v. Reusser*, 7th Dist. Monroe No. 13 MO 10 (Aug. 28, 2014), the Seventh Appellate District of Ohio recently addressed issues concerning application of the 1989 version of the Ohio Dormant Mineral Act (DMA). In *Eisenbarth*, the Court of Appeals held:

1. a recorded oil and gas lease covering the minerals sought to be abandoned is a title transaction that serves as a savings event under the DMA;
2. the appropriate look-back period is fixed to the 20 years preceding March 22, 1989 (with the applicable three-year grace period); and
3. a conveyance of the right to lease (also known as the executive right) does not result in a conveyance of the right to receive bonus payments.

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

Note that one judge concurred in the judgment only, relying instead on the 2006 version of the DMA and finding that the majority's analysis of the fixed 20-year look-back period was flawed.

BACKGROUND

In 1954, William Eisenbarth (William) transferred two tracts of land in Monroe County to Paul and Ida Eisenbarth (Paul and Ida). The deed reserved one-half of all minerals underlying the lands and all rights to develop and remove those minerals. However, the right to lease the minerals was expressly given to Paul and Ida. William subsequently transferred his half of the mineral estate to his daughter, Mildred Reusser (Mildred). Paul and Ida entered into a number of oil and gas leases over the years, the last being signed in 1973, and recorded on January 23, 1974.

In 2009, Paul and Ida's successors-in-interest (the Eisenbarths) published a notice of abandonment of Mildred's one-half interest in the minerals. Mildred's successors-in-interest (the Reussers) responded with a claim to preserve. In 2012, the Eisenbarths signed an oil and gas lease and received a \$766,250 signing bonus.

On June 6, 2013, the trial court granted judgment to the Reussers, quieting title to their one-half mineral interest and awarding them half of the bonus money. The Eisenbarths appealed the trial court's judgment and the Reussers cross-appealed contesting that various surface deeds were also savings events.

HOLDINGS

(1) Whether an oil and gas lease is a title transaction as defined by R.C. 5301.47?

Pursuant to the 1989 version of the DMA, the Court considered whether an oil and gas lease was a title transaction—one of the six identified savings events that prevent a mineral interest from being deemed abandoned and vested in the owner of the surface. Under the statute, a title transaction is defined as “any transaction affecting title to any interest in land.” Further, the statute provides a non-exhaustive list of title transaction examples.

In comparing an oil and gas lease to a mortgage—which is specifically enumerated on the statute's list of examples of title transactions—the Court determined that an oil and gas lease similarly affects title to an interest in land. Moreover, as the Court considered that an oil and gas lease was an encumbrance on title, it held that a lease fell into the definition of any transaction affecting title to any interest in land. Thus, the Court concluded that a recorded oil and gas lease was a savings event.

(2) Whether the mineral interest owners' rights were abandoned during the look-back period?

Basing its decision on the clear language of the 1989 version of the DMA, the Court stated that the statute does not specify that a savings event must occur every 20 years from the last savings event; and if the legislature intended successive look-back periods, such language would have been used.

Since the Court applied a fixed look-back period, and the oil and gas lease was found to be a savings event within the prior 20 years, the Court did not address whether transfers between surface owners should count as title transactions.

(3) Whether the one-half interest owner in mineral rights is entitled to a portion of a bonus payment received as a result of the exercise of the right to lease the property?

Despite the grant of the right to lease (also known as the executive right) to the Eisenbarths, the Court concluded that under the facts at issue, William's reservation of half of all the mineral rights entitled the Reussers to half of the bonus money. The Court recognized that the right to lease was merely “one stick in the bundle” of conveyable rights, and therefore, the fact that the right to lease was specifically granted did not leave the grantor with no right to receive bonus payments.