Oil and Gas Alert: Supreme Court of Ohio Addresses Due Diligence Under the Dormant Mineral Act

Related Attorneys

Gregory D. Russell

Webb I. Vorys

Ilya Batikov

Mark A. Hylton

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On December 17, 2020, the Supreme Court of Ohio addressed the surface owner's due diligence obligations under the 2006 version of the Ohio Dormant Mineral Act (the 2006 DMA). In *Gerrity v. Chervenak*, Slip Opinion No. 2020-Ohio-6705, the surface owners, the Chervenaks, tried to use the 2006 DMA to abandon severed mineral rights that were reserved decades earlier. The severed mineral holder, Timothy Gerrity, challenged the abandonment, claiming the Chervenaks failed to use due diligence when searching for mineral holders to serve by certified mail. The Court found that the Chervenaks were reasonably diligent under the specific facts. Although the Court declined to adopt any bright-line rules, its decision offers landowners helpful guidance when using the statute.

The disputed minerals were first reserved in 1961 in Guernsey County. In 1965, Jane F. Richards obtained the minerals through a certificate of transfer recorded in the same county that listed her as residing at an address in Cleveland, Ohio. The Guernsey County records revealed no further transfers of the minerals or more-recent information about Richards' whereabouts. Richards later died while residing in Florida. She left Gerrity as her sole heir.

The Chervenaks searched the Guernsey County Recorder's Office and Guernsey County Probate Court, but were unable to locate an updated address or any information regarding Richards' death or the identities of her heir(s). The Chervenaks then tried to search the Cuyahoga County Recorder's Office and Cuyahoga County Probate Court but were also unsuccessful. With no further information regarding Richards' whereabouts, the Chervenaks sent her a notice of abandonment to her Cleveland address through certified mail, which came back undeliverable. Only then did the Chervenaks serve Richards and her unknown heirs by newspaper publication.

Gerrity argued that the 2006 DMA mandates strict compliance, and therefore the Chervenaks were required to specifically identify and attempt to serve, by certified mail, every holder of a mineral interest. In the alternative, he urged the Court to adopt a bright-line test to

determine if a surface owner exercised reasonable diligence in locating a holder—a test, he claimed, that should require the surface owner to conduct an interest search, among other things.

Rejecting Gerrity's first argument, the Court held that, when looking at the statute as a whole, the 2006 DMA does not require a notice of abandonment to list the name of a holder that the surface owner has been unable to identify. The Court further held that a surface owner was not obligated to *attempt* to serve a notice of abandonment on every holder by certified mail before resorting to service by publication. Instead, the statute permits service by publication when it appears from the outset that service by certified mail cannot be completed, such as when a holder is unidentified or unlocatable.

The Court also declined to adopt a bright-line rule on what constitutes reasonable diligence. The court rejected Gerrity's argument that a surface owner must always search online resources to identify and locate holders. It also rejected the surface owner's proposition that a surface owner should only be required to search its own record chain of title. The Court instead held that whether a surface owner exercised reasonable diligence will depend on the facts and circumstances of each case. Here, the Court concluded that in searching the records of Guernsey and Cuyahoga counties, the Chervenaks exercised reasonable diligence.

The Court went on to provide guidance to aid lower courts in future 2006 DMA cases. A review of public-property and court records in the county where the subject land is located will "generally establish a baseline of reasonable diligence," the Court noted, though there may be circumstances when "the surface owner's independent knowledge or information revealed by the surface owner's review of the public-property and court records would require the surface owner . . . to continue looking elsewhere to identify or locate a holder."

Questions relating to this decision may be addressed to Greg Russell (gdrussell@vorys.com), Webb Vorys (wivorys@vorys.com), Jay Carr (jacarr@vorys.com), Ilya Batikov (ibatikov@vorys.com), or Mark Hylton (mahylton@vorys.com).