

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO
2014 JAN 13 PM 2:58
BETH ANN ROSE
CLERK OF COURTS

Anthony M. Gentile, et al.

Plaintiffs,

vs.

Case No. 2012-110

George Ackerman, et al.

Defendants.

JUDGMENT ENTRY
(Incorporating Findings of Fact and Conclusions of Law)

This matter is before the Court on Summary Judgment Motions filed by the Plaintiff herein as well as several answering Defendants. All parties were afforded reasonable time to file responses and replies to all Motions which were filed.

Based on the facts herein, the filings of the parties, and the applicable law, this Court makes the following findings and orders.

FACTS & INTRODUCTION

Plaintiffs herein are the owners of eighty (80) acres of certain real estate located in Seneca Township, Monroe County, Ohio. Said property is described in a deed dated August 12, 2011, filed on August 16, 2011 and recorded in Volume 206, Page 37 of the Official Records of Monroe County, Ohio. Although Plaintiffs brought their Complaint with regard to only Tract III, involving the 80-acre property, Defendants are also claiming an interest in one-half of the oil and gas royalties under Plaintiffs' Tract I, a 60.29 acre parcel.

The moving Defendants' purported interest stems from a Sheriff Sale pursuant to

Monroe County
Common Pleas
Court

Julie R. Selmon
Judge

FINAL APPEALABLE
2014

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This Entry to be Filed with the Clerk of Courts

a Writ of Partition and Dower of Eva Christman issued by the Monroe County Common Pleas Court on November 8, 1922. This Writ orders the Sheriff to sell the property at issue and further imparts a one-half interest in the "royalty oil, gas and gasoline in and under the . . . premises, and it is ordered that said estate be apated subject to said one-half royalty."

The Defendants are descendants and heirs of the fifteen parts issued.

On April 2, 1923, the Property was sold at the Sheriff's Sale to George M. Christman pursuant to the underlying Monroe County Probate Court Writ. This muniment made the following reservation of interest: "Excepting and reserving the one-half oil, and gas and gasoline royalty in and under the above described [sic] premises."

On April 3, 1923, George M. Christman and his wife, Cecelia Christman, sold the Property to L. E. Christman. This muniment's reservation reads (hereinafter sometimes referred to as the "Royalty Reservation"):

Excepting and reserving the one half oil and gas and gasoline royalty in and under the above described premises, same being the same royalty reserved in deed from Charles D. Barker, Sheriff to Grantor

This muniment transferred the whole of the surface rights and one-half of the undivided mineral interest to L. E. Christman.

On February 14, 1969, a Certificate of Transfer of Real Estate was issued from the Probate Estate of Lewis E. Christman (L. E. Christman). This muniment again reserved the oil and gas and gasoline royalty, and referenced the prior deed at Volume 93, Page 460 which cites back to the Sheriff's Deed and Writ of Partition and Dower which conveyed the subject one-half interest. This muniment states in pertinent part:

Excepting and reserving the one half oil and gas and gasoline royalty in

and under the above described premises.

* * *

Reference: Deed recorded in Volume 93, Pages 460-461 Monroe County Deed Records.

This muniment transferred the whole of the surface rights and one-half of the undivided mineral interest from L. E. Christman to his seven children.

The next entry in the Monroe County Recorder's Office is also dated February 14, 1969, and is the Certificate of Transfer of Interest in Oil and Gas and Gasoline Royalties issued by the Monroe County Probate Court. This muniment transferred the 1/18th portion of the undivided Christman Mineral Interest L. E. Christman inherited from Eva Christman via the Writ of Partition and Dower again to L. E. Christman's seven children.

On March 19, 1973, the Property was sold via Warranty Deed from Christman's children to Stephen Edward Hornacek. This muniment transferred the whole of the surface rights and one-half of the undivided mineral interests to Stephen Edward Hornacek, reserving the other undivided one-half Christman Mineral Interest in Christman's heirs.

Subsequently, in March of 1988, Fred E. Maibach purchased the Property from Stephen Edward Hornacek and his wife, Darlene. This Warranty Deed transferred the whole of the surface rights and one-half of the undivided mineral interests to Fred E. Maibach and reserved the undivided one-half Christman Mineral Interest in Christman's heirs.

In December of 2002, the Maibachs sold the Property to the Millers. This legal description included an exception and reservation of the undivided one-half of the oil, gas and gasoline royalty. This muniment transferred the whole of the surface rights and one-

half of the undivided mineral interests to the Millers and again reserved the undivided one-half Christman Mineral Interest in Christman's heirs.

On January 9, 2004, the Millers sold the Property to Joseph P. Gentile, Sr. , Joseph P. Gentile, Jr. , and Anthony M. Gentile. This muniment references the undivided one-half Christman Mineral Interest. It transferred the whole of the surface rights and one-half of the undivided mineral interests to Joseph P. Gentile, Sr. , Joseph P. Gentile, Jr. , and Anthony M. Gentile. The Property was then re-sold to Joseph P. Gentile, Sr. with a 1/6 interest and Anthony M. Gentile with a 5/6 interest, which legal description of Tract III also reserved the one-half oil, gas and gasoline royalty interest, and including the appropriate prior deed reference - again transferring the whole of the surface rights and one-half of the undivided mineral rights.

Finally, the Property was most recently sold via Warranty Deed to Anthony M. Gentile and Kathy A. Gentile, Plaintiffs, in August 2011. The Tract III legal description includes an exception and reservation of the one-half of the oil, gas and gasoline royalty interest with a reference to the prior instrument. Likewise, this muniment transferred the whole of the surface rights and one-half of the undivided mineral rights to the surface owners.

Plaintiffs bring this action alleging two (2) causes of action: (1) that the previous version of Ohio Revised Code § 5301.56, enacted March 22, 1989 operated to have the interest of the Defendants "deemed abandoned"; and in the alternative, (2) that the Ohio Marketable Title Act (ORC § 5301.47 - ORC § 5301.55) operates to extinguish the interest claimed by Defendants.

Defendants ask that the Plaintiffs' claims be rejected and ask this Court to find that Defendants' royalty interests still exist.

More specifically, Defendants argue that Plaintiffs' claims under the Marketable Title Act fail because:

(A). Defendants' one-half mineral interest is referred to specifically in a muniment within the marketable record title of Plaintiffs' parcel, and, therefore, the interest is preserved under the binding authority of the Ohio Supreme Court decision *Toth v. Berks Title Ins. Co.*, 6 Ohio St. 3d 338 (1983);

(B). Defendants' interest is also recorded in a title transaction which has been recorded subsequent to the effective date of Plaintiffs' Root of Title; and

(C). The Defendants' royalty interest is specifically identified in Plaintiffs' Root of Title.

Additionally, Defendants argue that Plaintiffs' claims under the previous version of the Dormant Mineral Act fail because:

(a). The previous version of the Dormant Mineral Act does not apply, as pursuant to the Seventh District's decision in *Dodd v. Croskey*, this Court should apply the 2006 version of the statute;

(b). Defendants' undivided one-half interest was the subject of numerous title transactions; and

(c). There is a producing well on a lease that encumbers the Property.

PROCEDURAL HISTORY

Plaintiffs originally filed this action against numerous Defendants on April 17, 2012. Eventually, this Court granted a Motion for Default Judgment against some Defendants. Plaintiff filed an Amended Complaint on May 16, 2013, adding a claim under the Dormant

Mineral Act. A Motion for Substitution was filed on September 6, 2013 to substitute in Seth and Laura Everly following the death of Lena E. Christman. Thus, at issue in this Summary Judgment Motion, are the interests of these eleven moving Defendants' interests in the oil and gas royalties on the Property.

LAW AND ARGUMENT

Summary Judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). Three elements must be shown: "(1) that there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the Motion for Summary Judgment is made." *Harless v. Willis Day Warehousing Co., Inc.*, 375 N.E. 2d 46, 54 Ohio St. 2d 64, 66 (1978). The moving party bears the initial burden of showing there are no genuine issues of material fact. *Id.* Once satisfied, the burden shifts to the non-moving party who must "set forth facts showing that there is a genuine issue for trial." *Dresher v. Burt*, 75 Ohio St. 3d 280, 293 (1996).

First, this Court will analyze the parties' claims and arguments under the Ohio Dormant Mineral Act.

Plaintiffs rely on a number of decisions from this Court, as well as other Trial Court opinions, and argue that the 1989 version of the Dormant Mineral Act applies. However, all of this Court's prior decisions on which Plaintiffs rely, were issued prior to the *Dodd v. Croskey* opinion. Without question, *Dodd v. Croskey*, 2013-Ohio-4257, is clearly controlling law in the Seventh District.

In *Dodd*, Plaintiffs acquired the property in dispute in 2009, after the 2006 version of the Dormant Mineral Act was enacted. Additionally, the Plaintiffs in *Dodd* brought their claims after the 2006 version of the DMA was enacted. In determining the extinguishment of the mineral interest, the Seventh District Court in *Dodd* proceeded to apply the 2006 version of the DMA statute. The Court did not mention or consider the possible application of the 1989 version of the statute.

Contrary to Plaintiffs' argument that the Appellate Court could not consider the prior version of the DMA because it wasn't pled in Plaintiffs' complaint, this Court finds that the Seventh District could have easily applied the 1989 version of the statute if it chose to do so. The Seventh District, however, did not do so. Instead, the *Dodd* Court expressly held that the Court must apply the 2006 version of the statute.

In the within case, Plaintiffs acquired the property in dispute in 2011 and this action was brought in 2012. This Court finds, consistent with the finding in *Dodd*, that Plaintiffs' claims must have been brought under the most recent version of R. C. § 5301.56. They were not. This Court therefore finds that the 2006 statute applies and accordingly, Defendants are entitled to judgment as a matter of law in their favor, against Plaintiffs, on Plaintiffs' claim in their Complaint pursuant to the Ohio Dormant Mineral Act.

Next, this Court must analyze Plaintiffs' claims under the Ohio Marketability Act and determine whether the Defendants' mineral interests are preserved.

It is undisputed that Plaintiffs' Root of Title was the transfer recorded on February 18, 1969 in Volume 154, Page 194 of the Deed Records of Monroe County, Ohio. This muniment states in relevant part:

Excepting and reserving the one half oil and gas and gasoline royalty in and under the above described premises.

Subject to an existing oil and gas lease.

Reference: Deed recorded in Volume 93, 460-461, Monroe County Deed Records.

The muniment referenced in Plaintiffs' Root of Title, Volume 93, Page 460, located at the County Recorder's Office, Volume 93, Page 460, contains the following reference:

Excepting and reserving the one half oil and gas and gasoline royalty in and under the above described premises, same being the royalty reserved in deed from Chas D. Barker Sheriff

Additionally, it is without dispute that the next entry in the Monroe County Recorder's Office (also dated 2-14-1969) directly after the Root of Title is the Certificate of Transfer of Interest in Oil and Gas and Gasoline Royalties issued by the Monroe County Probate Court. This muniment transferred the portion of the undivided Christman Mineral Interest L. E. Christman inherited from Eva Christman via the Writ of Partition and Dower again to L. E. Christman's seven children.

Ohio's Marketable Title Act, R. C. § 5301.47, *et seq.*, operates to extinguish any interests existing prior to the Root of Title "unless they are: (1) specifically stated or identified in the Root of Title, (2) specifically stated or identified in one of the muniments of the chain of record title within forty years after the Root of Title, (3) recorded pursuant to R. C. 5301.51 or R. C. 5301.52, (4) one of the other exceptions provided in R. C. § 5301.49, or (5) one of the rights that cannot be barred by the MTA as provided in R. C. 5301.53." *Semachko v. Hopko*, 35 Ohio App. 2d 205, 211, 301 N. E. 2d 560, 564 (8th Dist. 1973).

Thus, the Ohio Marketable Title Act preserves pre-root interest if the Root of Title contains a specific reference to where the document creating the interest can be located. *Toth v. Berks Title Insurance Co.*, 6 Ohio St. 3d 338, 453 N. E. 2d 639 (1983). In other words, a pre-root interest is preserved under the Marketable Title Act when the Root of Title "specifically identifies the recorded title transaction which creates the restrictions." *Blakely v. Capitan*, 34 Ohio App. 3d 46, 49, 516 N. E. 2d 248, 250 (11th Dist. 1986). This is because "[a]ll a party need do to find the complete recitation of the specific restrictions listed is to check at the County Recorder's Office."

Furthermore, the 7th District Court of Appeals in *Landefeld v. Keyes*, 1982 WL 6146 (Ohio App. 7 District), distinguishes between specific and general references to a severed oil and gas interest.

In *Landefeld*, the Defendants appealed a judgment from this Court which extinguished certain oil and gas rights existing prior to the Root of Title. The Defendants in that case claimed title to one-half of the oil and gas in and to 132 acres that was severed from the surface chain of the property in Deed Volume 81, Page 194 of the Deed Records of Monroe County, Ohio. The surface of that premises was subsequently split, and two separate chains of title were created. However, the separate chains both remained subject to the one-half (1/2) oil and gas reservation. One tract contained 49.25 acres and the other tract included the remaining 83 acres. The deeds in the chain of title (including the Root of Title Deed) for the 49.25 acre tract contained the following reference to the original reservation: "Also subject to all coal, oil and gas reservations heretofore made." *Id.* The subsequent deeds in the chain of title for the 83 acres contained the following reference

to the original reservation: "Excepting the coal and oil and gas rights as reserved by C. E. Ketterer and wife in deed to Geo. J. Egger dated March 26, 1914 in Deed Book No. 81, Pages 194-95, Monroe County, Ohio." *Id.*

The Seventh District noted that the references to the reservation involving the 83 acres were specific because the references cited the volume and page of the original reservation and the party who made the reservation. *Id.* at 2. However, the deeds in the chain of title for the 49.25 acres (the acreage that was the subject of the action) did not contain a specific enough reference to the original reservation to meet the requirements of ORC § 5301.49 because it included only the word "heretofore". *Id.* The Seventh District Court of Appeals in *Landefeld* affirmed this Court's decision that the Severed Mineral Interest was extinguished as it pertained to the 49.25 acre tract pursuant to the Marketable Title Act.

In the within case, this Court finds that Plaintiffs' Root of Title contains a specific reference to the mineral interest at issue. More specifically, the reservation reads:

Excepting and reserving the one half oil and gas and gasoline royalty in and under the above described premises.

Subject to an existing oil and gas lease.

Reference: Deed recorded in Volume 93, Page 460-461, Monroe County Deed Records.

Plaintiffs' Root of Title makes specific reference to Volume 93, Page 460-461. This muniment, located in the Monroe County Recorder's Office, contains the following additional reference:

Excepting and reserving the one half oil and gas and gasoline

royalty in and under the above described premises, same being the same royalty reserved in deed from Chas D. Barker Sheriff

Accordingly, this Court finds that both Plaintiffs' Root of Title and the muniment specifically referenced therein, except and reserve the mineral interest with sufficient specificity that it is preserved under Ohio's Marketable Title Act. Consistent with the holding in *Toth, supra*, a quick search of the Monroe County Recorder's Office would have resulted in Plaintiffs' finding the writ, the Sheriff's Deed, the 1969 Certificate of Transfer and several other muniments in the record chain of title which specifically reference the mineral interest at issue.

Based on the foregoing, this Court finds that Defendants are entitled to Summary Judgment as a matter of law on Plaintiffs' claim in their Complaint pursuant to the Ohio Marketable Title Act.

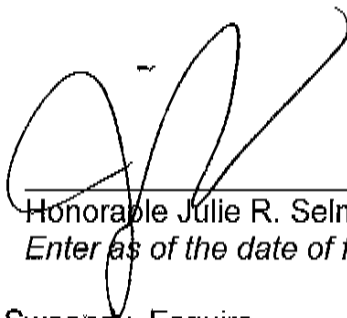
Accordingly, consistent with the findings above, Plaintiffs' Motion for Summary Judgment is denied and Defendants' motion for Summary Judgment is granted.

This Court further finds that several of the Defendants' filings were styled *Anthony M. Gentile, et al. , Plaintiffs v. Rhonda J. Piatt, et al. , Defendants*; Case No. 2012-110. This is an incorrect case style. All future filings herein shall be styled *Anthony M. Gentile, et al. , Plaintiffs v. George Ackerman, et al. , Defendants*; Case No. 2012-110. Any additional improperly-styled filings will be stricken from the record.

The Court further finds that there is no just reason for delay, and that this "Judgment Entry Incorporating Findings of Fact and Conclusions of Law" is a final appealable order, as defined under Civil Rule 54.

Costs are assessed in full to the Plaintiffs. Judgment is hereby granted the Clerk of this Court to collect on her costs.

IT IS SO ORDERED.



Honorable Julie R. Selmon
Enter as of the date of filing

Copies to: Richard A. Yoss/Craig E. Sweeney, Esquire
Miles D. Fries, Esquire
Mariah D. Butler, Esquire
Gregory D. Brunton, Esquire
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