IN THE COURT OF COMMON PLEAS
FOR CARROLL COUNTY

RONALD EDWARD DAHLGREN, et al.	)	
	)	Case No. 13CVH27445
Plaintiffs	)	
	)	Judge Richard M. Markus
v.	)	(Serving By Assignment)
	)	
BROWN FARM PROPERTIES, L.L.C. et al.	)	FINAL OPINION AND
	)	JUDGMENT
Defendants	)	

FACTUAL AND PROCEDURAL HISTORY

On February 11, 2013, eight plaintiffs filed this case to quiet title for oil and gas rights they inherited from their mother or grandmother. Three defendant landowners contend that Ohio's Dormant Mineral Act deemed that the family abandoned those rights which then merged into the landowners' surface titles. The fourth defendant is a developer that holds the plaintiffs' leases for those oil and gas rights. Each defendant filed an Answer with a Crossclaim or a Counterclaim. The defendant developer supported the plaintiffs' claims.

Ohio adopted its Dormant Mineral Act as part of its Marketable Title Act on March 22, 1989, and added significant procedural provisions by an amendment on June 30, 2006. The parties agree that either the 1989 version or the 2006 version of Ohio's Dormant Minerals Act governs their dispute. No one asserted or sought to enforce an abandonment claim while the 1989 version was in effect. This Court concludes that the 2006 version controls and denies the landowners' abandonment claim, so the plaintiffs retain those rights.

On August 5, 2013, all parties jointly filed "Stipulations of Fact" which provide:

> Certain parties have recently amended their pleadings so that the only claims remaining in this action by any party sound in declaratory relief or quiet title and involve the issue of whether the Defendants have ownership of the oil and gas minerals underlying their respective properties. The parties agree and stipulate to the following facts and request that the issue of the ownership of the subject minerals be finally decided by the Court based upon the stipulated facts without the need of any trial.

Those factual stipulations provide the basis for this Court's decision.

On September 16, 1949, Carl E. Dahlgren and Leora Perry Dahlgren (husband and wife) conveyed 225.59 acres in Carroll County to William Lewis Dunlap, with a deed that provided:

> Excepting and reserving to Leora Perry Dahlgren all the oil and gas underlying said premises together with rights of way for pipe lines and ingress and egress to any drilling operations thereon and for the removal of said minerals from said property.

By that deed, the Dahlgrens severed the subsurface title for oil and gas from the surface title for that property. See *Gill v. Fletcher* (1906), 74 Ohio St. 295, paragraphs 1-3 of the syllabus.

Leora Dahlgren did not convey her retained mineral rights to anyone before her death on March 13, 1977. Her will and resulting probate court orders vested her mineral rights in her three children. They are the lawful successors to Leora Dahlgren's reserved rights, pursuant to probate court Certificates of Transfer which her daughter mistakenly filed with the Carroll County Probate Court rather than the Carroll County Recorder's Office. The Carroll County Probate Court issued a Certificate of Transfer for those oil and gas rights to those children on May 3, 1978.

Those reserved rights were not the subject of any title transaction that anyone recorded in

the Carroll County Recorder's Office between March 22, 1969 (twenty years before the effective date for the 1989 version of the Dormant Minerals Act) and September 17, 2009 (the date when one of the plaintiffs first recorded an oil and gas lease to a developer).

There was no drilling at, production from, or storage of oil or gas on that property or any property pooled with it before July 5, 2012. The severed oil and gas title was not separated from the surface title on tax lists for the Carroll County Auditor or the Carroll County Treasurer. No one filed a claim in the Carroll County Recorder's Office for oil or gas ownership on the relevant properties before one of the plaintiffs filed that claim on April 12, 2012.

The three defendant landowners are the lawful successors to William Dunlap's rights for the relevant properties, pursuant to duly recorded chains of title. In each of their chains of title the deeds are expressly subject to the oil and gas reservation set forth in the deed recorded at Volume 121, Page 300, which is the 1949 Dahlgren deed.

Two of the three landowner defendants first acquired their interests in the relevant properties after the 2006 amendment to Ohio's Dormant Mineral Act, so they did not and could not have asserted any abandonment claim before that amendment. The remaining landowner defendant acquired his interest in relevant property by deeds in 1999 and 2002.

None of the defendant landowners nor any of their respective predecessors in interests ever asserted any abandonment for the relevant mineral rights in any court proceeding before these landowner defendants filed their pleadings in this case.

In 2009, each of the plaintiffs leased their oil and gas interests for the relevant properties to a developer who recorded those leases in the Carroll County Recorder's Office in 2009 or 2010, and who later assigned those leases to the defendant developer.

In March of 2012, one of the defendant landowners sent the plaintiffs and the leaseholder developer a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest (Ohio Revised Code 5301.56)" for part of the relevant properties. There is no evidence that before then any of the defendant landowners or any of their predecessors in interest ever asserted to any of the plaintiffs or to any public official that any owner of those mineral interests had abandoned them.

Within 60 days after the landowners sent them a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest," five of the eight plaintiffs filed claims for their relevant mineral interests in the Carroll County Recorders' Office.

On September 3, 2013, the plaintiffs filed their Brief in Support of Request for Judgment. On October 18, 2013, the three defendant landowners filed their Motion for Judgment and Supporting Brief, and the defendant developer filed its Responsive Brief in Support of Plaintiffs' Request for Judgment. On November 1, 2013, the plaintiffs filed their Responsive Brief. The case is now ripe for this Court's decision.

THE UNDERLYING MARKETABLE TITLE ACT

In 1961 Ohio joined a widespread title reform movement when it enacted its Marketable Title Act as R.C. 5301.47-5301.56. In the Prefatory Note for a later proposed Uniform Marketable Title Act, the National Conference of Commissioners on Uniform State Laws explained the general purpose for those laws:

> The basic idea of the Marketable Title Act is to codify the venerable New England tradition of conducting title searches back not to the original creation of title, but for a reasonable period only. The Model Act is designed to assure a title searcher who has found a chain of title starting with a document at least 30 years old that he need search no further back in the record. Provisions for rerecording and for protection of persons using or occupying land are designed to prevent the

> possibility of fraudulent use of the marketable record title rules to oust true owners of property.
>
> The most controversial issue with respect to marketable title legislation is whether or not an exception should be made for mineral rights. This [Uniform] Act follows the Model Act in making no such exception. Any major exception largely defeats the purpose of marketable title legislation, by forcing the title examiner to search back for an indefinite period for claims falling under the exception.

As originally enacted, Ohio's Marketable Title Act governed all interests in land including severed mineral interests. It relies on a chain of title with a "root" record no more than 40 years old. It included R.C. 5301.47 ("Definitions"), 5301.48 ("Unbroken chain of recorded title"), 5301.49 ("Record marketable title; exceptions"); 5301.50 ("Prior interests"), 5301.51 ("Preservation of interest"); 5301.52 ("Contents of notice"); 5301.53 ("Certain rights not barred"); 5301.54 ("Effect of changes in law"), 5301.55 ("Liberal construction"), and R.C. 5301.56 ("Three year extension"). Between 1963 and 1989, the legislature adopted various amendments to those sections, which are not relevant here.

Effective March 22, 1989, the legislature repealed and rewrote R.C. 5301.56 to create Ohio's Dormant Minerals Act. Effective June 30, 2006, the legislature amended R.C. 5301.56 by adding procedures for a surface landowner to claim that a mineral rights holder has abandoned those rights and for the mineral rights holder to challenge that claim.

In their context, it is clear that the legislature has always intended that the Marketable Title Act (R.C. 4301.47-5301.55) and the Dormant Minerals Act (R.C. 5301.56) are integrated title laws which should be read together whenever they were in effect.

Thus, R.C. 5301.47 provides definitions that apply to R.C. 5301.47 to 5301.56 inclusive; and R.C. 5301.54 restricts the effect of all those sections on other statutory provisions. More

significantly, R.C. 5301.55 directs:

> Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

The purpose of the Marketable Title Act is to, "simplify and facilitate land title transactions by allowing persons to rely on a record chain of title." *Collins v. Moran*, 2004-Ohio-1381 (7th Dist.), ¶20, quoting *Semachko v. Hopko* (1973), 35 Ohio App.2d 205; see also *Pinkney v. Southwick Investments, L.L.C.*, 2005-Ohio-4167 (8th Dist.) at ¶31.

Both the Marketable Title Act and its Dormant Minerals Act component support reliance on public documents rather than private communications for title transfers. For some purposes, the Marketable title Act permits reliance on public documents outside the county recorder's office.

R.C. 5301.47 defines reliable public records that document title interests and transfers:

> As used in sections 5301.47 to 5301.56, inclusive of the Revised Code:
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> * * * *
>
> (B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.
>
> (C) "Recording," when applied to the official public records of the probate or other court, includes filing.
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> * * * *
>
> (F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

R.C. 5301.48 defines the holder of an "unbroken chain of title" for an interest in real property and therefore a "marketable title" for that interest to include (a) a person for whom those public records show an unbroken chain of title for that interest which extends back for at least forty years; or (b) a person for whom those public records show an unbroken chain of title for an interest that a document created within the preceding forty years. If the documents in that chain of title specifically identify a recorded document that created an interest in that property, the act preserves that interest. R.C. 5301.49(A). All interests created before an unbroken chain of title that extends back at least forty years which are not otherwise preserved by the act are "null and void" [R.C. 5301.50] and "extinguished" [R.C. 5301.49(D)].

Subject to specified exceptions, the holder of an interest with an unbroken chain of title for at least forty years need not demonstrate (a) the creation of that interest more than forty years earlier, or (b) the termination of any purported limitation on that interest more than forty years earlier. The forty years are measured back from "the time the marketability is being determined" [R.C. 5301.47(E) and R.C. 5301.51(B)]; or "is to be determined" [R.C. 5301.48]

R.C. 5301.51 and 5301.52 permit the holder to preserve an otherwise unprotected interest by recording a prescribed notice. Before the 2006 amendment that created the Dormant Minerals Act, the legislature repeatedly revised R.C. 5301.56 to provide additional three year grace periods during which the prescribed notice could preserve that interest, which it ultimately extended to December 31, 1976 [more than 15 years after the act's effective date].

TWO VERSIONS OF THE DORMANT MINERALS ACT

Following the adoption of Marketable Title Acts, many states added special rules for the termination of mineral rights, including temporary lease interests and permanent fee simple

ownership. Here again, the National Conference of Commissioners on Uniform State Laws explains that history in the Prefatory Note for its Uniform Dormant Interests Act, which the Conference approved in 1986 and the A.B.A. approved on February 16, 1987:

> Transactions involving mineral interests may take several different forms. A *lease* permits the lessee to enter the land and remove minerals for a specified period of time; . . . . A fee title or other interests in minerals may be created by *severance*.
>
> A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may *reserve* all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. . . .
>
> Second, a person who owns both the surface of the land and a mineral interest may *convey* all or a portion of the mineral interest to another person. . . . . Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple.
>
> Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record. If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.
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> * * * *

An extensive body of legal literature demonstrates the need for an effective means

of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

* * * *

Nonuse. A number of statutes have made *nonuse* of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon. The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. . . . .

Recording. Another approach found in several jurisdictions, as well as in USLTA [Uniform Simplification of Land Transactions Act], is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

* * * *

Constitutionality. Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, *Texaco v. Short*, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a

mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

For Ohio, both the 1989 version and the 2006 version of the Dormant Minerals Act create statutory conditions when the owner of subsurface minerals rights is "deemed" to have abandoned those rights. Both versions designate those conditions by excluding circumstances when the owner is not deemed to have abandoned them. In the 1989 version, R.C. 5301.56(B)(1) designated conditions that denied or disqualified a statutory claim that a mineral rights owner abandoned those rights:

(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(c) Within the preceding twenty years, one or more of the following has occurred:

(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which

the lands are located.

(ii) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(iii) The mineral interest has been used in underground gas storage operations by the holder.

(iv) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(v) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

The 1989 version provided a three year grace period after its effective date for any of the disqualifying conditions (including the filing of a mineral rights claim) to preclude abandonment. R.C. 5301.56(B)(2).

The 2006 version designates the same conditions that deny or disqualify a statutory claim that the owner of subsurface mineral rights abandoned those rights. The critical difference between the 1989 version and the 2006 amended version of the Dormant Minerals Act is the presence in the 2006 version and the absence in the 1989 version of any express provision for its

implementation. COMMON PLEAS JOURNAL 234 PAGE # 19

For the 2006 version, the Act provides procedures for a surface owner to regain severed subsurface mineral rights in the absence of those specified circumstances. To terminate any subsurface rights the surface owner must notify each subsurface holder that he or she intends to declare that interest abandoned [R.C. 5301.56 (E)(1)] and within thirty days thereafter must file an affidavit of abandonment with the applicable county recorder [R.C. 5301.56 (E)(2)]. The notice must identify the allegedly abandoned subsurface rights and assert the statutorily defined inactivity [R.C. 5301.56 (F)]. The affidavit of abandonment must confirm the notice and allege the statutorily defined abandonment [R.C. 5301.56 (G)].

The 2006 version provides procedures for the subsurface owner to oppose the surface owner's notice by filing within sixty days thereafter a claim to preserve those rights [R.C. 5301.56 (H)(1)(a)] or an affidavit that disputes the statutorily defined abandonment. [R.C. 5301.56 (H)(1)(b)] If the subsurface holder fails to file either of those documents within that time, the recorder shall memorialize those events and thereby vest the surface owner with that subsurface holder's rights. [R.C. 5301.56 (H)(2)]

By contrast, the 1989 version of Ohio Dormant Mineral Act did not include any provision for the surface owner to notify the holder of any subsurface mineral rights about an abandonment claim before or after the alleged abandonment, or to file anything with the country recorder or anywhere else. It provided no procedure for the holder of subsurface rights to contest their alleged abandonment, and no procedure for anyone to record the abandonment anywhere.

The 2006 version for R.C. 5301.56(B)(3) permits the surface owner to send the holder of any subsurface mineral rights an abandonment notice whenever none of the statutorily defined

disqualifying events occurred within twenty years preceding that notice. The 1989 version of R.C. 5301.56(B)(1)(c) provided for its application unless: "Within the preceding twenty years one or more of the following has occurred," without specifying the event from which it measures the preceding twenty years. In lieu of the 1989 version's three year grace period after the statute's effective date for the mineral rights holder to establish h any of the disqualifying events (including a filed claim), the 2006 version permits the mineral rights holder to file that claim within 60 days after the surface owner notifies him of the claimed abandonment.

Nothing in either the 1989 version or the 2006 version denies that the Marketable Title Act (R.C. 5301.47-5301.55) remains applicable to mineral rights, at least to the extent that the Dormant Minerals Act does not expressly provide differently.

In this case, the surface landowners assert (a) that the 1989 version established the claimed abandonment automatically when none of the disqualifying events occurred within twenty years preceding its effective date or the three year grace period; and (b) that the abandonment was complete before the 2006 amendment required different procedures to assert or confirm it.

By contrast, the holders of the reserved mineral rights and the developer who holds their leases contend (a) that the 2006 version controls the abandonment procedures here because the landowners first asserted any abandonment after 2006, (b) that the landowners have not complied with the procedures required by the 2006 amendment because they never filed the required abandonment affidavit which permitted them to contest that claim, and (c) that the 2006 version precludes abandonment because disqualifying events occurred after 2006.

Counsel have not cited any appellate decision that decides whether or when to apply the

1989 version of R.C. 5301.56 for an abandonment claim filed after the 2006 amendment. But see *Dodd v. Croskey*, 7th Dist. No. 12HA6, 2013-Ohio-4257 (Sept. 23, 2013)(applying the 2006 version to events that arose before its enactment without discussion of that choice). This court has found none.

After careful consideration, this Court agrees with the holders of the subsurface mineral rights. Without any contrary statutory language, this Court concludes that the 1989 version impliedly required implementation before it finally settled the parties' rights, at least by a recorded abandonment claim that permitted the adverse party to challenge its validity, if not by an appropriate court proceeding to confirm that abandonment. Circumstances that support a claimed right do not by themselves provide a completed remedy. Absent any implementation or enforcement of claimed abandonment rights before the 2006 amendment, the landowner defendants must comply with the procedures which the 2006 amendment requires.

First, the surface owners' interpretation of the 1989 version conflicts with "the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 5301.48 of the Revised Code." R.C. 5301.55. The county recorder's records would not reveal some disqualifying conditions that prevent statutory abandonment. See R.C. 5301.56(B)(3)(c)("The mineral interest has been used in underground gas storage operations by the holder"); 5301.56(B)(3)(f)("In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located"). A title examiner might well find the recorded Dahlgren deed with its reservation of mineral rights, without any record that shows whether the Dahlgrens or their

descendents preserved or abandoned those rights.

Second, interested parties could dispute compliance with disqualifying conditions, without filing anything in the recorder's office. Hence, reliance on the recorder's records to establish or avoid abandonment requires at least a recorded document if not judicial confirmation.

Third, "[f]orfeitures are not favored by the law. The law requires that we favor individual property rights when interpreting forfeiture statutes." *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917* (1992), 65 Ohio St.3d 532, 534, quoted at *Sogg v. Zurz*, 2009-Ohio-1526, 121 Ohio St.3d 449, ¶9; see also *State v. Lilliock* (1982), 70 Ohio St.2d 23, 25; *Dodd v. Croskey, supra,* at ¶35.

Fourth, the Dormant Minerals Act employs considerably less conclusive language than the Marketable Title Act to terminate title interests. The Marketable Title Act establishes that the unprotected rights are "null and void" or "extinguished," while the Dormant Minerals Act provides that they are "deemed abandoned." Compare R.C. 5301.50 and R.C. 5301.49(D) with R.C. 5301.56(B)(1). The less conclusive language in the Dormant Minerals Act strongly suggests that it provides standards but does not resolve the issue. Compare *Blatt v. Hamilton County Bd. of Revision*, 2009-Ohio-5260, 123 Ohio St.3d , ¶22; *In Re Washington*, 2004-Ohio-6981, 10th Dist. No. 04AP429, ¶23.

Fifth, the landowners' interpretation of these provisions creates the anomaly that mineral rights are deemed abandoned when the owner has a statutorily preserved record marketable title. In this case, for example, the plaintiffs have a record marketable record title from the probate court's Certificate of Transfer less than forty years earlier, pursuant to R.C. 5301.47(A) and R.C.

5301.48; which the defendant landowners' own deeds have preserved pursuant to R.C. 5301.49 and R.C. 5301.51. See See *Toth v. Berks Title Ins. Co.* (1983), 6 Ohio St.3d 338, syllabus; *Heifner v. Bradford* (1983), 4 Ohio St. 3d 49, syllabus.

Sixth, this Court doubts that statutory abandonment is constitutionally enforceable without giving the adverse party an opportunity to dispute the relevant claims. In *Texaco v. Short* (1982), 54 U.S. 516, the federal Supreme Court ruled that Indiana's Dormant Minerals Act satisfied federal constitutional protections when a mineral owner lost his rights in specified circumstances without giving that owner advance notice. But the same opinion stated at 533-34:

> The question then presented is whether, given that knowledge, appellants had a constitutional right to be advised -- presumably by the surface owner -- that their 20-year period of nonuse was about to expire.
>
> In answering this question, it is essential to recognize the difference between the self-executing feature of the statute and a subsequent judicial determination that a particular lapse did, in fact, occur. As noted by appellants, no specific notice need be given of an impending lapse. . . . It is undisputed that, before judgment could be entered in a quiet title action that would determine conclusively that a mineral interest has reverted to the surface owner, the full procedural protections of the Due Process Clause -- including notice reasonably calculated to reach all interested parties and a prior opportunity to be heard -- must be provided. (underlining emphasis added)

Without advance notice and an opportunity to be heard, statutory abandonment may violate Art. I, Sec. 19 of the Ohio Constitution ("Private property shall ever be held inviolate"), even if it does not violate federal constitutional provisions. However, we need not determine whether statutory abandonment without prior notice satisfies that provision of the Ohio Constitution where other considerations reach the same result without addressing that concern.

In any event, Due Process requirements in both the federal and state constitutions unquestionably mandate notice and an opportunity to respond before a dispute about those rights

> interest has reverted to the surface owner, the full procedural protections of the Due Process Clause -- including notice reasonably calculated to reach all interested parties and a prior opportunity to be heard -- must be provided. (underlining emphasis added)

Without advance notice and an opportunity to be heard, statutory abandonment may violate Art. I, Sec. 19 of the Ohio Constitution ("Private property shall ever be held inviolate"), even if it does not violate federal constitutional provisions. However, we need not determine whether statutory abandonment without prior notice satisfies that provision of the Ohio Constitution where other considerations reach the same result without addressing that concern.

In any event, Due Process requirements in both the federal and state constitutions unquestionably mandate notice and an opportunity to respond before a dispute about those rights can be resolved. Courts should construe statutes in the manner that best confirms their constitutionality. *Mahoning Education Association of Developmental Disabilities v. State Employment Relations Board*, 2013-Ohio-4654, ¶19; *State v. Carnes*, 2007-Ohio-604, ¶ (7th Dist.)

For the purposes of this decision, the court accepts the defendant landowners' argument that the 1989 version of Ohio's Dormant Mineral Act deemed the plaintiffs' mineral rights abandoned if none of the disqualifying conditions existed within twenty years before March 22, 1989 (the act's effective date) or before March 22, 1992 (the statutory grace period). See *Riddel v. Layman*, 5th Dist. No. 94CA114 (July 10, 1995). However, at most the absence of those conditions created an inchoate right; it could not and did not transfer ownership without judicial confirmation or at least an opportunity for the disowned party to contest their absence or the effect of their absence.

arbitrary and unsupportable assumption that their failure to develop those minerals meant that they deliberately abandoned them forever. Could the legislature deem that a surface property owner abandoned his title if he failed to develop an empty lot for some arbitrary interval? The federal Supreme Court's decision in *Texaco v. Short, supra*, may answer: "Yes." But the property owner must have an opportunity to dispute that result.

NO ABANDONMENT UNDER THE CURRENT LAW

Each of the plaintiffs leased his or her oil and gas interests for the relevant properties to a developer who recorded those leases in the Carroll County Recorder's Office in 2009 or 2010. Those recorded leases are "title transactions" that preclude any deemed abandonment for the plaintiffs' mineral interests pursuant to the 2006 version of R.C. 5301.56(B)(3)(a).

Within 60 days after a landowner sent them a "Notice of Owner's Intent to Declare the Abandonment of Mineral Interest," five of the eight plaintiffs filed statutorily sufficient claims for their relevant mineral interests in the Carroll County Recorders' Office. Those recorded claims preclude any deemed abandonment for their interests and the interests of all the remaining plaintiffs pursuant to the 2006 version of R.C. 5301.56(B)(3)(e) and 5301.56(C)(2).

Two of the landowner defendants never complied with R.C. 5301.56(E)(1) by sending or publishing notice to "each holder" of the allegedly abandoned mineral interests. None of the defendant landowners ever complied with R.C. 5301.56(E)(2) by filing an "affidavit of abandonment" in the Carroll County Recorder's office. Without those notices or affidavits, those landowners failed to invoke the abandonment procedures which the 2006 version requires to assert an abandonment claim.

In this case, the following plaintiffs hold mineral rights for the relevant properties: Ronald Edward Dahlgren, Elsa Anne Lyle, Helen Mary Dahlgren, Martha Perry Dahlgren, Cynthia Ann Crowder, Daniel Carl Dahlgren, Charles Stephen Dahlgren, and Diane Ellen Pullins. The parties have not asked this Court to determine which plaintiff owns any allocated interest in those rights for each relevant property, and this judgment shall not serve that purpose.

In this case, the following defendants own the relevant properties: Brown Farm Properties, LLC, Brian L. Wagner, and Thomas Beadnell.

In this case, Chesapeake Exploration, LLC is the current holder of assigned leases and the defendant developer for the plaintiffs' oil and gas ownership on the relevant properties.

This Court determines and declares that each of the eight plaintiffs retains his or her respective interest in oil and gas located on or recovered from the properties designated in the Complaint and its attachments.

This Court quiets ownership and title to those mineral rights in the plaintiffs and not in the surface landowner defendants.

This Court determines and declares that each of the landowner defendants retains his or its surface ownership for those properties.

This Court determines and declares that the defendant developer retains its rights as the holder of recorded and assigned leases to those oil and gas rights.

Within sixty days after this Court files its judgment with the Clerk of the Carroll County Common Pleas Court and any subsequent appeals from that judgment are exhausted, each of the plaintiffs or their counsel shall file a copy of this Final Opinion and Judgment in the Carroll

County Recorder's Office, together with a claim that satisfies R.C. 5301.56(C)(1).

The plaintiffs shall recover the costs of this case, not including attorney fees or litigation expenses.

Richard M. Markus

Judge Richard M. Markus, Retired Judge Recalled to Service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Carroll County Common Pleas Court for this matter.

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THIS FINAL OPINION AND JUDGMENT TO ALL COUNSEL AND THE ASSIGNED VISITING JUDGE

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