Ohio's Eleventh District Says Inter Vivos Property Sales Contract Gutted Decade-Old Transfer-On-Death-Designation Affidavit

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Ohio's statutory transfer on death designation (TODD) affidavit mechanism (ORC § 5302.22-24) is a popular and inexpensive way to transfer real estate outside of probate. But what happens when the owner who executed and recorded a TODD later signs a contract to sell that real estate and then dies before closing? Addressing this issue of first impression, Ohio's Eleventh District Court of Appeals in *Estate of Eleanor M. Hovanick*, 2026-Ohio-3915 (11th Dist.) held that the inter vivos sale was valid, the TODD beneficiaries get paper title, but the estate gets the sales proceeds. [1]

Decade-Old TODD, New Will, and Last-Minute Sale

The sequence of events matters here, so let's take it in order. On November 10, 2010, Eleanor Hovanick signed and recorded a TODD affidavit covering nearly 62 acres in Orwell, Ohio, naming Ann M. Zimmer, Carol Mohr, Michael Hovanick, and Peggy Rodriguez as beneficiaries.[2] She never revoked or replaced it.[3] On July 18, 2021, Eleanor executed a will leaving all of her property in equal shares to Michael Hovanick and Lucinda Hovanick, and "specifically left nothing to Carol Mohr."[4] (Zimmer and Rodriguez predeceased her.)[5] On December 19, 2021, Eleanor signed a purchase and sale agreement to sell the Orwell property to the Western Reserve Land Conservancy for $350,000, along with a $50,000 charitable pledge to Western Reserve out of the sale proceeds.[6] Western Reserve countersigned on December 27, 2021, making the agreement effective.[7] Eleanor died the very next day, December 28, 2021 — still the owner of record.[8]

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Carol Mohr: Excluded No More?

Carol Mohr, excluded from Eleanor's will, objected to the estate inventory, arguing the TODD made the property (and thus its proceeds) a non-probate asset.[9] The magistrate agreed and recommended this conclusion, but the probate court did not, and the Eleventh District affirmed the probate court.[10] The culprit was the venerable doctrine of equitable conversion. Under that doctrine, once a binding contract for the sale of land exists, "equity considers it as converted into personalty"; the buyer holds equitable title, the seller holds bare legal title in trust for the buyer, and the seller's interest becomes a right to the purchase money — personal property.[11] The court traced this rule back more than 150 years in Ohio law.[12] Against the TODD statute's own text, the Eleventh District found no conflict: A TODD beneficiary "takes only the interest that the deceased owner … held on the date of death," and the statute speaks only to real property.[13] Because Western Reserve's agreement was "in writing, for a sum certain," and fully binding before death, Eleanor held only bare legal title impressed with a trust for Western Reserve when she died.[14] The beneficiaries took that bare title (subject to the duty to convey), while the purchase money passed through the estate under the will because it was personalty.[15] The court emphasized that the TODD was not "revoked"— Ohio's exclusive revocation method is recording a new affidavit — it simply had no real property left to distribute.[16]

The Eleventh District also found Eleanor's intent unmistakable: five months before signing the sale contract, she wrote Mohr out of her will.[17] And the court rejected the argument that Ohio's anti-ademption statute helped Mohr because it applies only to specific devisees under a will, not non-probate TODD beneficiaries.[18] In other words, Mohr wasn't sold out by a typo or a technicality — she was dissed by an executed sales contract.

An Issue of First Impression

The parties agreed — and the court acknowledged — that this was "apparently an issue of first impression" for both Ohio's appellate

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districts and the Supreme Court of Ohio.[19] The only prior Ohio decision squarely on point was a 1935 probate court ruling with no precedential value.[20] *Estate of Eleanor M. Hovanick* therefore supplies the first appellate rule of decision on how Ohio's TODD statutes, R.C. 5302.22 and 5302.23, interact with equitable conversion — and, absent further review by the Ohio Supreme Court, it will be the reference point statewide.

Why Producers Should Care

For oil and gas producers and landmen, *Hovanick* highlights a potential wrinkle for title review. A recorded, unrevoked TODD affidavit and a death certificate may suggest the beneficiaries own the property outright — but if the decedent signed a binding, unrecorded sales contract before death, the beneficiaries may hold only bare legal title, with the equitable interest in a purchaser and the value in the estate.[21] Because executory purchase agreements are often never recorded, that risk may not appear in the county records at all. Leasing from, or paying royalties to, TODD beneficiaries without asking about a pending sale invites later disputes. Practitioners should consider adding pre-death contracts of sale to their curative checklist when a TODD appears in the chain.

For more information, please contact Christopher Rogers or any attorney on FBT Gibbons' Oil, Gas & Minerals industry team.

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[1]*Estate of Eleanor M. Hovanick*, 2026-Ohio-3915, ¶ 1 (11th Dist.). A copy of this decision can be found here.

[2]*Hovanick* at ¶ 2.

[3]*Id.* at ¶ 2.

[4]*Id.* at ¶ 3.

[5]*Id.* at ¶ 3.

[6]*Id.* at ¶ 4.

[7]*Id.* at ¶ 4.

[8]*Id.* at ¶ 5.

[9]*Id.* at ¶¶ 6, 8.

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[10]*Id.* at ¶¶ 10–11, 16–19, 66.

[11]*Id.* at ¶¶ 31–33.

[12]*Id.* at ¶¶ 34–36.

[13]*Id.* at ¶¶ 25–26, 61.

[14]*Id.* at ¶¶ 40, 61.

[15]*Id.* at ¶¶ 44, 57, 61.

[16]*Id.* at ¶ 56.

[17]*Id.* at ¶ 55.

[18]*Id.* at ¶ 59, fn. 3.

[19]*Id.* at ¶¶ 1, 23.

[20]*Id.* at ¶ 16, fn. 1.

[21]*Hovanick* at ¶¶ 57, 61.

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