



Fonzi Gives Thumbs Down to Ohio DMA Search that Ignored Pennsylvania Records

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In its June 1, 2020 [Fonzi v. Brown](#)^[1] decision, Ohio's Seventh District Court of Appeals held that a surface owner's failure to search for holders in Pennsylvania when the severance deed indicated the grantors' specific township and county there, *per se* did not meet the reasonable due diligence standard under the Ohio Dormant Mineral Act (DMA). Unlike cases affirming a trial court's conclusion that a search was reasonable, *Fonzi* provides an example of a search that did not meet Ohio's due diligence search requirements **as a matter of law**. Thus, it constitutes an important addition to Ohio's growing body of law in this area.

Fonzi involved property located in Monroe County, Ohio. *Fonzi* at ¶ 2. Elizabeth Fonzi conveyed the property at issue to Donald and Eva Jean Brown in October 1952 and expressly reserved one-half of the royalty interest. *Id.* at ¶ 3. That 1952 deed also specified that Elizabeth and her husband, Harry II, resided in Finleyville, Washington County, Pennsylvania. *Id.* Elizabeth and Harry had two children, Harry III and Linda. *Id.* Harry II and Elizabeth subsequently divorced and each remarried but neither had additional children. *Id.* Elizabeth died in 1989 (her second husband having predeceased her) and Harry II died in 1996—the latter's probate paperwork reflected that his children were co-executors of his estate and sole heirs. *Id.*

In 2006, Donald and Eva Jean conveyed the property to the appellee, Gary Brown, who later leased it with Eclipse in 2012. *Id.* at ¶ 4. Seeking to have the 1952 one-half royalty interest reservation abandoned, Gray Brown hired an attorney to implement the DMA. *Fonzi* at ¶ 5. His attorney searched the Monroe County records and the internet, but did not look in the Washington County, Pennsylvania public records, being of the opinion that only the public records of the county in which the property is located is relevant for the DMA. *Id.* Finding no heirs, Gray Brown published notice of his intent to abandon in a local newspaper (the Monroe County Beacon) and thereafter recorded his affidavit of

abandonment on April 29, 2013. *Id.* at ¶ 6.

Elizabeth and Harry III filed a lawsuit on May 12, 2017 against Gary Brown and Eclipse, seeking a declaratory judgment and to quiet title. *Fonzi* at ¶ 7. Gary Brown answered and filed a cross-claim seeking the same. The Monroe County Court of Common Pleas granted summary judgment in Gary Brown's favor, holding, among other things, that he utilized reasonable efforts to locate the holders and was entitled to provide notice by publication. *Id.* at ¶ 9.

The Seventh District Court of Appeals reversed the trial court's judgment and granted summary judgment in favor of Harry III and Linda. *Fonzi* at ¶ 36. The court vehemently disagreed with the trial court's determination that only the records of the county where the property sat were relevant for purpose of due diligence under the Ohio DMA. *Id.* at ¶ 31–32. On this point, the *Fonzi* court reiterated its adherence to a reasonableness standard based upon the facts and circumstances of the case (as opposed to a bright-line rule), and held that failing to search Washington County, Pennsylvania records when the 1952 deed clearly provided that location failed the Ohio DMA's search and notice requirements as a matter of law:

The fact that the Fonzis lived in another state does not relieve the researcher of the burden to conduct a reasonable, diligent search. Appellee had specific knowledge that the Fonzis lived in Finleyville, Washington County. The failure to conduct any search into the Washington County public records after learning that this is where the Fonzis resided is ***per se* unreasonable** based on the facts of this case. As such, Appellee failed to comply with the notice requirements of R.C. 5301.56(E) and notice by publication was improper.

Fonzi at ¶ 33 (bold typeface added).

Distinguishing this situation from [*Sharp v. Miller*, 2018–Ohio–4740, 114 N.E.3d 1285 \(7th Dist.\)](#), the *Fonzi* Court pointed out that in *Sharp* the researcher had no specific information upon which to believe that the holder might be located outside of the county where the property was located. *Fonzi* at ¶ 26. Likewise, the *Fonzi* court distinguished [*Gerrity v. Chervenak, Trustee of Chervenak Family Trust*, 2019–Ohio–2771, — N.E.3d — \(5th Dist.\)](#), noting that in *Gerrity*,

even though the property was located in Guernsey County and the severance deed indicated that the holder's residence was in Cuyahoga County, the researcher actually searched the Cuyahoga County public records. *Id.* at 27.

The takeaway from *Fonzi* is that Ohio courts require surface owners to take reasonable steps to provide holders with actual notice of the intent to abandon their severed mineral interest. Thus, where the severance deed provides specific information that a holder resided outside of the county in which the property is located, the surface owner *per se* violates the Ohio DMA's reasonableness standard by not searching there.

For more information, contact [Chris Rogers](#), or any attorney with Frost Brown Todd's [Oil & Gas](#) industry team.

[1] *HARRY A. FONZI, III & LINDA GRIMES Plaintiffs–Appellants, v. GARY D. BROWN & ECLIPSE RESOURCE I, LP Defendants–Appellees.*, 7th Dist. Monroe No. 19 MO 0012, 2020–Ohio–3631.

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