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Crum v. Yoder: No, the DMA Does Not Require You to Serve Notice of Abandonment on Your Own Address

Ohio's oil and gas community keenly awaits the Ohio Supreme Court's decisions in *Gerrity v. Chervenak* and other related cases for (hopefully) definitive guidance on the search and service requirements of the Ohio Dormant Mineral Act (R.C. 5301.56) (DMA). Meanwhile, Ohio's Seventh District is still issuing opinions on a seemingly endless stream of cases. The latest is *Betty Morris Crum et al. v. Aden M. Yoder, et al.*, 7th Dist. Monroe No. 20 MO 0005, 2020-Ohio-5046. The full opinion can be found [here](#). *Crum* is not groundbreaking, but still has lessons to bestow.

First, the Seventh District reaffirmed that the lack of an internet search alone is not necessarily fatal to a DMA abandonment. See *Crum*, ¶ 62. This was first enunciated in *Sharp v. Miller*, 2018-Ohio-4740, 114 N.E.3d 1285 (7th Dist.), and was a salient part of the Fifth District's holding in *Gerrity v. Chervenak*, 2019-Ohio-2771, 140 N.E.3d 164. Here, the surface owners—the Yoders—searched the public records of Monroe County (where the property is located) and Belmont County, but found nothing identifying the heirs of the grantors who reserved the minerals in the 1990 deed—Ernie Morris and Louise I. Morris. *Crum*, ¶ 6. The Yoders did not conduct an internet search. The Morris heirs offered a title examiner's 2016 affidavit that a Google search located Ernie and Louise's obituaries and gave the names and potential locations of the children into evidence, but the Seventh District was not persuaded that an internet search was required. *Crum*, ¶ 61 (noting that “the information available on the internet is not always reliable” and that “the availability of information may vary depending on the search engine used” but that “a search of the official public records does not engender these same difficulties.”).

Second, and perhaps most interesting, in *Crum* the Seventh District answered the absurd question no one was asking: must a surface owner attempt to serve notice of abandonment via certified mail on her own address? The Plaintiffs/Appellants and heirs of the severed

mineral interest owners—the Morris heirs—argued that the Yoders failed the DMA because they did not attempt to serve Ernie and Louise at their last known address of record, which happens to be the Yoders’ current address. *Crum*, ¶ 45. As the Court points out, the Morris heirs either did not think this argument through or mistakenly believed the DMA required perhaps the most fruitless attempt at service conceivable. *Id.*, 46. Regardless, the Seventh District called out and rejected this absurdity: “It would be absurd for the Yoders to send certified mail to their own property and address it to the two people who sold the property (to the predecessor of the Yoders’ predecessor) in 1990.” *Id.*, ¶ 47. Perhaps this argument marks the peak (or nadir) of Ohio DMA litigation. Only time and more cases will tell.

Third, the *Crum* Court explored the often-overlooked distinction between exceptions and reservations. This arose because the Morris heirs argued that their 1994 deed to the Yoders, which contained reservation language identical to the 1990 deed, was an actual reservation of minerals and therefore a title transaction of the severed minerals; it was a savings event under the DMA. This was so, the Morris heirs argued, because Ernie and Louise owned the severed minerals as tenants in common (not as joint tenants with the right of survivorship), which meant that when Ernie died intestate in 1994, part of his severed mineral interest went to the Morris heirs, who then affirmatively reserved it to themselves in the 1994 deed by which they conveyed the 60 acres to the Yoders. *Crum*, ¶ 67.

While creative, this argument fell flat because the Seventh District did not agree that Ernie and Louise owned the severed minerals as tenants in common, as opposed to joint tenants with the right of survivorship. As mentioned above, Ernie and Louise owned the 60 acres as joint tenants with the right of survivorship before the 1990 deed. Thus, the question came down to whether the 1990 deed’s exception and reservation language was an exception or a reservation. The Morris heirs argued it was a reservation; the Yoders argued it was an exception. After a somewhat lengthy discussion of the origins of the exception-reservation distinction and joint tenancy ownership in Ohio, the Court concluded that the 1990

deed's reservation was an exception: "the minerals already existed as corporeal parts of the property and were already owned by Ernie and Louise Morris, joint and survivor, at the time they sold the surface...." *Id.* ¶ 87. And because of this, Ernie and Louise owned the severed minerals as joint tenants with the right of survivorship after the 1990 deed. *Id.* Thus, when Ernie died in 1994, all of his interest in the oil and gas went to Louise, not the children (the Morris heirs), meaning they had nothing to reserve to themselves via the 1994 deed. *Id.*, ¶ 90. Without an actual reservation, the 1994 deed's language was merely a recital, was not a title transaction, and not a savings event. *Id.*

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