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Lucas v. Whyte: Seventh District Says Filings in Other Counties Are Not Title Transactions Under the Marketable Title Act

In its January 22, 2021 opinion in *Lucas v. Whyte*¹, a 2-to-1 majority of the Court of Appeals of Ohio for the Seventh District held that probate filings in a county other than where the property is located did not save an oil and gas reservation from extinguishment under Ohio's Marketable Title Act, R.C. 5301.47 et seq.(MTA). To constitute an exception under R.C. 5301.49(D), the filing must be recorded in the county where the property is situated. Judge Waite dissented, asserting that the specific language of the MTA, namely the placement of the comma in the definition of "Records," did not specify that the probate filings must be in the county where the property sits.

In 1914, John D. Miller and Sarah Emma Miller owned 25 acres in Sunbury Township, **Monroe County**, Ohio, which they conveyed to John McCoy, but reserved one-half of all the oil and gas and all of the coal.² John D. Miller died in 1940, but his probate was handled in adjacent **Belmont County**, where a certificate of transfer conveyed all of his real estate to the predecessors of the Appellants (Whyte et al.).³ Several of these predecessors subsequently died and their estates were administered in Belmont County and those public records evidenced filings purporting to convey their interests in 1986, 1989, and 1999.⁴ Meanwhile, the appellee (Lucas), who acquired the surface estate, sought abandonment of the severed one-half interest via Ohio's Dormant Mineral Act (R.C. 5301.56) (DMA) and then brought a quiet title action under the DMA and MTA.⁵ Under the MTA, her claim was based upon a root of title deed from 1966 and the argument that because there was nothing referencing this 1914 oil and gas reservation in the public records after the 1966 deed, the 1914 reservation was extinguished by the MTA.⁶

The question before the Seventh District was whether these Belmont County probate filings in 1986, 1989, and 1991 (i.e. during the 40-year period after the 1966 root of title deed) saved the severed interest from extinguishment even though they were not filed in Monroe County where the property was located. The Seventh District reviewed the MTA and other relevant decisions dealing tangentially with the question of whether out-of-county or out-of-state filings will constitute a title transaction to halt an extinguishment.⁷ Focusing on R.C. 5301.47, which sets forth the “title transaction” exception to extinguishment, the question was whether a “Record” included filings outside of the county. The majority said “no,” pointing to the legislative purpose of the MTA, as well as the practical reality that in reviewing title, one looks at the county records where the property sits, not outside of it.⁸ Because the property sits in Monroe County, probate filings in Belmont County cannot constitute title transactions. Having determined that the severed minerals were extinguished via the MTA, the majority did not rule on the trial court’s decision that it was abandoned under the DMA.⁹

Judge Waite dissented, focusing on the definition of “record,” which R.C. 5301.47 defines as including “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.”¹⁰ Only the second part of this definition—the part after the comma—specifically references the clause “the county in which all or part of the land is situate[,]” which means the first part of this definition is not qualified as such. That is, “probate and other official public records” need not necessarily be located within the county where all or part of the property sits.¹¹ Applied here, the Belmont County probate filings would function as title transactions and preserve the 1914 Reservation.¹²

In this author’s opinion, the majority got it right. The records of the county where the property is located is where anyone interested in title for property located there would look. So, to untether “probate and other official public records” from the county where the property is located, as the dissent suggests is what the legislature intended, is to open up the search to virtually every county of every state. This essentially creates a due diligence requirement that is

nowhere expressly required in the MTA and a result that is diametrically opposed to the stated purpose of the MTA, which is to simplify title. Under the logic of the dissent, a title researcher could almost never be assured that there is not a title transaction recorded in the probate or public records in some other county of every state. This essentially prevents any title from benefitting from the intent of the Marketable Title Act, which is to foster marketability.

For more information, please contact [Michael Brewster](#), [Christopher Rogers](#), or any attorney in Frost Brown Todd's [Oil & Gas](#) Industry Team.

¹7th Dist. Monroe No. 19 MO 0022, 2021-Ohio-222.

²*Id.* at ¶ 2.

³*Id.* at ¶ 3.

⁴*Id.* at ¶ 29.

⁵*Id.* ¶¶ 5-7.

⁶*Id.* at ¶ 7.

⁷*Id.* at ¶¶ 35-37 (discussing *Warner v. Palmer*, 7th Dist. Belmont No. 18 BE 0012, 2019-Ohio-4078, *appeal not allowed*, 158 Ohio St.3d 1422, 2020-Ohio-647, 140 N.E.3d 740, *reconsideration denied*, 158 Ohio St.3d 1507, 2020-Ohio-2819, 144 N.E.3d 447 and *Peppertree Farms, LLC v. Thonen*, 5th Dist. Stark No. 2019CA00159, 2020-Ohio-3042, ¶ 51, *appeal allowed sub nom. Peppertree Farms, L.L.C. v. Thonen*, 160 Ohio St.3d 1407, 2020-Ohio-4574, 153 N.E.3d 104, *reconsideration granted*, 160 Ohio St.3d 1462, 2020-Ohio-5332, 157 N.E.3d 798.)

⁸*Id.* at ¶ 38.

⁹*Id.* at ¶ 50.

¹⁰*Lucas* at ¶ 53.

¹¹*Id.* at ¶ 55.

¹²*Id.* at ¶ 59.

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