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Authors:
[Christopher W. Rogers](#)

More Ohio MTA Action: Seventh District Further Clarifies Difference between Specific and General References

In its March 31, 2021 decision in [O'Kelley, Jr. v. Rothenbuhler](#),^[1] interpreting a 1969 deed reference, the Ohio Seventh District Court of Appeals determined that the language was not sufficiently specific to save a severed mineral interest from extinguishment under Ohio's Marketable Title Act, R.C. 5301.47 *et seq.* (MTA).

O'Kelley involved an 1893 deed that excepted and reserved, in part, as follows:

All oil, gas and minerals (including coal) of whatsoever kinds with full right to develop same and to operate on said premises therefore with the incidental rights and privileges necessary to such development and operation including among other things the right to locate and drill thereon and therein oil wells and gas wells to lay pipes to and from said wells * * *^[2]

The severed mineral interest was expressly conveyed in 1943.^[3] Although the interest purportedly passed via intestacy, there were no other conveyances of record after this 1943 deed.^[4] The surface interest was conveyed through a number of deeds, including a 1969 deed (the "Rothenbuhler Deed") containing the following reference: ***"and also excepting the oil and gas minerals including coal underlying the same heretofore conveyed."***^[5]

The lawsuit was filed on August 9, 2019, meaning, for purposes of the MTA, the root of title is the most recent transfer before August 9, 1979—being 40 years prior to the complaint filing.^[6] The Rothenbuhler Deed was this root of title. Thus, the question was whether its language ***"and also excepting the oil and gas minerals..."*** was sufficiently specific to stop extinguishment under the MTA.^[7] The trial court granted summary judgment in favor of the defendants-appellees, holding that it was not specific and,

therefore, was extinguished by the MTA.^[8] The Seventh District agreed.

The Seventh District walked through the three-part test the Ohio Supreme Court established in *Blackstone v. Moore* and found that the reference failed step 2, which asks “is the reference to that interest a ‘general reference’?”^[9] Compared to the reference in *Blackstone*, which provided “excepting the one-half interest in oil and gas royalty previously excepted by Nick Kuhn...[,]” the Seventh District found the 1969 deed reference lacking because it neither specifically described the interest nor did it identify to whom it was granted/reserved.^[10] Likewise, compared to the references in *Erickson v. Morrison*,^[11] which were (nearly) verbatim quotes of the original severance language, the reference here was insufficient: “Simply stated, the reference lacks any ‘narrow precise considerations, ‘limited details,’ or ‘particulars’ as described in *Blackstone*.”^[12]

The Seventh District’s decision here aligns with *Erickson* and *Blackstone* and is likely the correct decision on these facts (in this author’s opinion). While there is still no bright-line rule, it is another case added to the jurisprudence, which helps increase certainty for those that must evaluate and decide.

For more information, please contact [Christopher Rogers](#) or any attorney in Frost Brown Todd’s [Oil & Gas](#) industry team.

^[1] 2021-Ohio-1167, 7th Dist. No. 20 MO 0009, 2021 WL 1264573

^[2] *O’Kelly, Jr.*, ¶ 8.

^[3] *Id.*, ¶ 11.

^[4] *Id.*, ¶ 12.

^[5] *Id.*, ¶¶ 14–15.

^[6] *Id.*, ¶ 16.

^[7] *Id.*, ¶ 16.

^[8] *Id.*, ¶ 7.

^[9] *O’Kelley, Jr.*, ¶ 28.

[\[10\]](#) *Id.*, ¶ 34.

[\[11\]](#) ERICKSON ET AL., APPELLANTS, v. MORRISON ET AL., APPELLEES.
Additional Party Names: Paul E, Vesta G. Morrison, W. Randall, 2021–
Ohio–746.

[\[12\]](#) *Id.*, ¶ 44.

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