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Erickson v. Morrison: Ohio Supreme Court Clarifies When Recitals of Prior Reservations Are Sufficiently Specific to Preserve Under Ohio's Marketable Title Act

When it comes to claims that an interest was extinguished under Ohio's Marketable Title Act, R.C. 5301.47 *et seq.* (MTA), the question often comes down to whether there are any recitals or references to the prior reservation and, if so, whether they are specific enough to satisfy the MTA's requirement that it not be a "general reference."

¹ This is the question the Ohio Supreme Court answered back in 2018 in *Blackstone v. Moore*,² and which they answered again on March 16, 2021 in *Erickson v. Morrison*.³ In summary, the Court held that the recital in later deeds of reservation language that was nearly identical to the original severance language was specific enough to point a reviewer back to the original deed and, as such, sufficient to preserve the interest under the MTA.

In *Erickson*, a 1926 deed reserved to the grantors ***"all coal, gas, and oil with the right of said first parties, their heirs and assigns, at any time to drill and operate for oil and gas and to mine all coal."***

⁴ Five subsequent deeds of the surface estate between 1926 and 1971 included a similar exception and reservation, though they omitted the word "said."⁵ The owners of the severed oil and gas interest brought suit to declare themselves the owners of that interest, and the surface estate owners counterclaimed, asserting that any oil and gas interest was extinguished by the MTA.⁶

The question was whether these reservation recitals were sufficiently specific to preserve the 1926 severance. The surface owners relied on *Blackstone v. Moore* to argue that because these recitals did not call out by name the owner of the severed interest, they were not sufficiently specific and therefore failed to preserve it.⁷ In *Blackstone*, the Ohio Supreme Court held that a recital of an oil and gas reservation that did not include a specific book and

page number, but did specifically identify the type of interest created and the name of the owner, was sufficiently specific to preserve that interest.⁸ However, the severed mineral interest owners argued that nothing in the MTA or *Blackstone* requires such a specific recital. Put another way, just because it was sufficient in *Blackstone*, doesn't mean it was *required*.

The Ohio Supreme Court agreed with the severed mineral interest owners. Neither the MTA nor *Blackstone* require a recital to specify the owner name, and there is no evidence in the legislative history of the MTA that the Ohio Legislature intended a higher threshold of specificity be required (other than to say that boilerplate references to prior exceptions are "general"). Thus, it comes down to a case-by-case determination of whether the recital language in the context of its chain-of-title is sufficient to point the reviewer back to the specific interest. This, says the Erickson Court, is what the reservation at issue did: ***"the Morrisons' [surface owners'] root of title and subsequent conveyances are made subject to a specific, identifiable reservation of mineral rights recited throughout their chain of title using the same language as the recorded title transaction that created it."***⁹

Did the Court get this one right? Probably. The Court's overarching theme is really one of common sense: if you are looking at this chain of title, can you figure out what interest this recital is talking about? Even if the recital does not point you to a book and page, it may contain other information or characteristics that get you to the same place. Here, it was the repetition of the (nearly) identical language over and over again—an echo of the original severance. The Court is merely saying that you cannot ignore that simply because you want to own the minerals.

Whether *Erickson's* guidance is helpful is another question. The Court has not created a bright-line rule and doesn't appear intent on ever doing so. As it did in *Blackstone*, the Court is leaving it to the legislature to create a bright-line rule, should it so choose. The problem, for mineral owners and practitioners alike, is that the Court's opinions do little to create certainty, which means Ohioans need the courts to decide each case. As is often the case, jurisprudential restraint means time-consuming, often expensive

litigation just to get a definitive answer.

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

¹This article will not delve into the basic mechanics of how the MTA operates. For now, just know that if an interest is based upon a reservation in a deed that comes before the root-of-title deed (e.g., a severance deed), it could be extinguished by the MTA unless it is preserved by, for example, a reference or recital *after* the root-of-title deed that is sufficiently specific to point the reviewer to the deed by which that interest was created.

²155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132.

³ERICKSON ET AL., APPELLANTS, v. MORRISON ET AL., APPELLEES. Additional Party Names: Paul E, Vesta G. Morrison, W. Randall, 2021-Ohio-746. A copy of this opinion can be found [here](#).

⁴*Erickson*, ¶ 5 (emphasis added).

⁵*Id.*, ¶ 6.

⁶*Id.*, ¶ 8.

⁷*Erickson*, ¶ 13.

⁸*See id.* and see *Blackstone*, ¶ 15.

⁹*Erickson*, ¶ 32 (emphasis added).

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