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[Christopher W. Rogers](#)

Zelek v. Tomlinson: Ohio's 11th District Signals Disapproval of Default Judgments Against Subset of Non-Answering Heirs Where Title Dispute Has Not Been Decided

In actions to resolve oil and gas title disputes involving a multitude of far-flung individuals/heirs, it often happens that some defendants answer and challenge the complaint and others do not. Plaintiffs often seek default judgments against these non-answering individuals, seeking extinguishment of their interest in the Plaintiffs' favor. But, at a basic level, this result creates a situation where the ultimate issue—ownership—is pre-judged before it is determined on its merits. Acknowledging this problem, a growing number of Ohio Courts of Appeal are reversing default judgments in these circumstances.^[1]

The latest is Ohio's Eleventh District Court of Appeals for Portage County in *Zelek v. Tomlinson*.^[2] There, the Zeleks initiated a quiet title action against the heirs of the grantors in a 1904 deed that contained an oil and gas reservation the Zeleks argued was actually only a life estate (the "Heirs").^[3] They also named Ascent Resources – Utica, LLC as a defendant, who had leases with the Zeleks as well as the Heirs.^[4] Ascent and some of the Heirs answered the complaint, but four of the Heirs did not.^[5] The Zeleks moved for a default judgment, seeking the interest of these four Heirs and a judgment declaring their leases extinguished.^[6] The trial court granted this motion over Ascent's argument in opposition that entry of a default was inappropriate "because Ascent did not fail to appear and defend against the action, and the defenses it raised inure to the benefit of the defaulting defendants."^[7]

On appeal to the Eleventh District Court of Appeals for Portage County, the court discussed the *Wampum* case in detail, which involved a similar factual scenario with some of the defendants answering and others not. In that case, the Fifth District Court of

Appeals for Guernsey County reversed the trial court's grant of default because some of the defendants did answer and challenge the plaintiffs' claims. The *Wampum* court noted that "[b]ecause this issue [entitlement to oil and gas rights] has yet to be decided by the trial court, there is a possibility that [its default judgment] could conflict with its declaratory judgment finding as to the non-defaulting defendants."^[8] Finding the same circumstances before it, the *Zelek* court reached the same conclusion: "by quieting title in the Zeleks with respect to any right or interest the defaulting defendants may claim...the trial court has effectively predetermined the ultimate issue in the matter."^[9] This constituted an abuse of discretion warranting reversal.^[10]

The default judgment rule in litigation has its place, but not in title disputes involving the MTA and/or DMA where only some of the similarly situated defendants have failed to answer. It creates inconsistencies in ownership and pre-judges the ultimate issue yet to be decided before the court. Accordingly, *Zelek* (and *Wampum* before it) represent a positive step by the courts to remove this potential for inconsistency and allow a determination to be made on the merits and not just based on procedure.

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

^[1] See e.g. *Wampum Hardware Co. v. Moss*, 5th Dist. Guernsey Nos. 14 CA 20 & 14 CA 17, 2015-Ohio-2564.

^[2] 11th Dist. Portage Nos. 2020-P-0090 and 2021-P-0013, 2021-Ohio-3973. A copy of this opinion can be found at: <https://www.supremecourt.ohio.gov/rod/docs/pdf/11/2021/2021-Ohio-3973.pdf>

^[3] *Id.* at ¶ 3.

^[4] *Id.*

^[5] *Id.* at ¶ 5.

^[6] *Id.*

^[7] *Id.*

^[8] *Zelek* at ¶ 12 (quoting *Wampum* at ¶¶ 29-31).

^[9] *Id.* at ¶ 13.

^[10] *Id.* at ¶ 14.

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