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Ignorance is still not bliss... Ohio's 7th District Confirms DMA Surface Owners Ignore County-Record Evidence at their Peril

In yet another opinion on the due diligence requirements of a surface owner seeking abandonment of severed minerals under Ohio's Dormant Mineral Act, R.C. 5301.56 (the "DMA"), Ohio's Seventh District Court of Appeals held (again) that where there is evidence that holders of a severed mineral interest live out of state, the surface owner ignores that information at their peril.^[1]

Roy Beckett owned approximately 110 1/2 acres in Smithfield Township, Jefferson County, Ohio.^[2] Beckett died on December 10, 1966, leaving the property to his children, Leroy II and Grace via his last will and testament, which was probated in Jefferson County.^[3] Those probate records evidenced that Grace had an address in Urbana, Illinois and Leroy's address was in Manchester, Connecticut.^[4] A certificate of transfer recorded in relation to this showed Grace with an address in R.F.D. Rayland, Ohio and Leroy with a Manchester, Connecticut address.^[5] Through separate deeds both dated January 28, 1980, Grace and Leroy conveyed their interests to Fred and Helen Straus, reserving the oil and gas. Notably, Grace's deed was notarized in Champaign County, Illinois—where Urbana is located.^[6] Through subsequent conveyances, the property ended up with each of the Appellees.^[7]

In 2011, seeking to obtain ownership of the severed mineral interests via abandonment under the DMA, Rosza et al. (through counsel) conducted searches of the public records in Jefferson County relative to any conveyance or preservation of the 1980 oil and gas reservations by the Beckett heirs. Counsel asserted that he found no conveyances or preserving events and, additionally, no ancillary estates for Grace or Leroy II filed in Jefferson County.^[8] Because of this, no attempt was made to serve the holders via certified mail.^[9] Notice of the intent to abandon was made via publication, and when no notice(s) of preservation were filed, marginal notations were

made evidencing abandonment.^[10]

The heirs of Grace and Leroy II leased their interests to Wolf Run in 2017 and one heir conveyed her interest to Wolf Run in 2018.^[11] Wolf Run and the heirs filed suit against Rosza et al. seeking, among other claims, to quiet title on the ground that their DMA implementation was *void ab initio* for failure to satisfy the notice requirements of the DMA. After discovery, the parties filed cross-motions for summary judgment. The trial court entered judgment in favor of Rosza et al. on the ground that, despite the information of record showing out-of-state addresses, enough time had passed without preserving activities that Rosza et al. were deemed to have fulfilled their duties under the DMA.^[12]

Issuing its opinion two weeks after the argument, the Seventh District quickly reversed the trial court, vacated its judgment, and entered summary judgment for Beckett et al. Explaining its rationale, the Seventh District started from the premise that a surface owner's failure to satisfy the due diligence requirements of R.C. 5301.56(E) is dispositive of the question of whether the abandonment was effective.^[13] The Seventh District Court cited *Gerrity*, ^[14] where the Ohio Supreme Court held that there is no bright-line test for sufficiency of due diligence—that can only come from the legislature. Rather, sufficiency is determined on a case-by-case basis that, in short, can be boiled down to a test of reasonableness and common sense. If independent knowledge or other information discovered leads the searcher to go out of county or out of state, reasonable diligence requires that lead to be followed.^[15] The Seventh District viewed *Gerrity* as dispositive: “Applying *Gerrity*, we find that Appellees’ search was unreasonable because there was evidence in the Jefferson County probate records that established that Leroy lived in Connecticut and Grace lived in Illinois.”^[16]

In all, the Seventh District reached the correct conclusion based upon the line of cases led by the Ohio Supreme Court’s opinion in *Gerrity*. A search of county records constitutes the floor of a reasonable search under R.C. 5301.56(E)—not the ceiling—and the surface owner who ignores information showing out-of-state residence does so at their peril. And while a bright-line, legislative

litmus test would be ideal, Ohio's jurisprudence is developing into a useful guide.

[1] *Leroy Beckett, III et al. v. Joseph Rosza et al.*, — Ohio —, 21 JE 0003 (7th Dist. Nov. 18, 2021). A copy of the opinion can be found [here](#). For purposes of full disclosure, the author represented Ascent Resources – Utica, LLC in this lawsuit, but did not participate in the appeal.

[2] *Beckett, III* at ¶ 5.

[3] *Id.*

[4] *Id.* at ¶ 6.

[5] *Id.*

[6] *Id.* at ¶ 9.

[7] *Id.* at ¶ 10.

[8] *Beckett, III* at ¶ 11.

[9] *Id.*

[10] *Id.* at ¶ 13.

[11] *Id.* at ¶ 15.

[12] *Id.* at ¶ 16.

[13] *Id.* at ¶ 25.

[14] *Gerrity v. Chervenak*, 162 Ohio St.3d 694, 2020–Ohio–6705, 166 N.E.3d 1230

[15] *Beckett III* at ¶ 26.

[16] *Id.* at ¶ 31.

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