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George K. Pernick et al. v. Jasper J. Dallas et al.: Seventh District Court of Appeals Highlights Bedrock Principles of Conveyancing Behind MTA and DMA

Pro se litigants often inadvertently make the case for hiring a lawyer. But, unconstrained by the conventional thinking of lawyers, they sometimes raise arguments that force courts to address important concepts and fundamental principles that otherwise might be presumed. Such is the case with [Pernick v. Dallas](#), 2021-Ohio-4635, 21 JE 0011 (7th Dist. Dec. 13, 2021). Appellant, Joanne Dallas¹, one of the heirs of a severed mineral interest deriving from a 1925 deed (the “Dallas Interest”), represented herself in defending the Dallas Interest from extinguishment under the Marketable Title Act (R.C. 5301.47 *et seq.*) (“MTA”). She argued, in summary, that (1) the **surface owners’** (not the severed mineral interest holder’s) actions in leasing within the 40-year lookback period preserved her severed mineral interest under the MTA and (2) that the 1962 deed could not be a root of title because it did not expressly purport to convey the interest the surface owners claimed². The trial court granted summary judgment to the surface owners, finding the MTA extinguished the Dallas Interest, and the Seventh District affirmed.³ While this decision is not seminal, it afforded the Court a teachable moment on bedrock principles of conveyancing and how they underlie the MTA and the Dormant Mineral Act (R.C. 5301.56) (“DMA”).

Principle 1: You Cannot Convey What You Do Not Own.

As to Appellant’s first argument, the Seventh District points out that executing (and recording) a lease can be both a title transaction under the DMA and preserve a severed mineral interest under the MTA: *“In DMA cases, we have concluded a lease constitutes a title transaction as defined by R.C. 5301.47(F), which is applicable to the*

MTA.... Therefore, a lease could prevent extinguishment under the MTA.”⁴ Thus, where the **severed mineral interest** owner enters into a lease within the 40-year lookback period (i.e. while he or she still owns the minerals), it constitutes both a savings event under the DMA and will also operate to prevent extinguishment under the MTA. On the other hand, where it is the **surface owner** who leases within the 40-year lookback (i.e. before he or she owns it via extinguishment)—as was the situation in *Pernick*—it does not function the same way under the MTA and DMA.⁵

Why? Because of the fundamental principle that one cannot convey what one does not own. In the first situation, the severed mineral interest owner had title to the severed minerals; therefore, executing (and recording) a lease was a transaction involving title to the severed minerals. Both the DMA and MTA recognize this as a “savings event,” which will preserve the interest for the requisite period (20 years under the DMA and 40 years under the MTA). In the second situation, the surface owner is purporting to lease minerals **but does not yet own them**. With no title to convey, the surface owner’s lease is not a title transaction and cannot stop abandonment or extinguishment under the DMA or MTA (assuming all other requirements are met). *“Thus, when the lease was entered into between Appellees’ and Belden and Blake Corporation, Appellees did not own the minerals. Thus, the lease was not a valid lease and even if it could constitute a preservation of Appellant’s interest, it would not because it was not a valid title transaction.”*⁶

Principle 2: A Deed Conveys a Grantor’s Entire Estate Unless It Specifies Otherwise.

Appellant’s second argument, which challenges the root-of-title status of the 1962 Deed, failed to account for the fundamental rule of conveyancing that a deed will convey the largest estate possible unless it specifically and expressly provides otherwise.⁷ Appellant argued that the 1962 deed was not the root of title because it did not purport to convey the severed oil and gas interest and, in her view, did not “purport[] to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title....”⁸ Looking at the definition of “Root of Title” alone, Appellant’s

reading is not unreasonable: it says the deed must purport to create the interest claimed, and there is no language in the 1962 deed purporting to do this. Ergo, it cannot be a root of title, right? Wrong.

This view incorrectly presumes that deeds must spell out every aspect of the estate conveyed to validly convey it. This hyper-technical standard for conveyancing was long ago changed, as evidenced by Ohio's R.C. 5301.02, enacted in 1953, which provides, in part, that: "[E]very grant, conveyance, or mortgage of lands, tenements, or hereditaments shall convey or mortgage the entire interest which the grantor could lawfully grant, convey, or mortgage, unless it clearly appears by the deed, mortgage, or instrument that the grantor intended to convey or mortgage a less estate."⁹ Accordingly, the Seventh District rejected her position: "What Defendant may not understand is that the Root of Title Deed, and all Deeds, convey the entire interest absent express exceptions and reservations." Moreover, if Appellant's position were the law, almost no deed could be a root of title, as it would have required its grantors to have preternatural foresight.

The trial court and the Seventh District got this decision right. And for those of us who needed a refresher course, the Seventh District revisited the rules of conveyancing and fortified the foundations of Ohio's Marketable Title Act and Dormant Mineral Act.

¹Ms. Dallas is from Dallas, TX. See *Pernick* at *1.

²*Pernick* at ¶ 1.

³*Id.* at ¶¶ 1–2. The surface owners also alleged the severed mineral interest was abandoned under the DMA, but this was moot because the MTA extinguished the interest. *Id.*

⁴*Id.* at ¶ 31.

⁵The root of title deed was July 5, 1962 and the surface owners leased to Belden and Blake on March 14, 2002, about four months before the 40-year lookback period expired and the severed mineral interest was extinguished by the MTA. See *id.* at ¶ 32.

⁶*Id.* at ¶ 33.

⁷See, e.g. *Dollar Bank, Fed. Sav. Bank v. Simon*, 8th Dist. Cuyahoga

No. 57799, 1991 WL 6366, *3 (citing *Oberholtz v. Oberholtz* (1947), 79 Ohio App. 540). Quit claim deeds should be distinguished from general warranty deeds, as the former only transfer the interest the grantor has at the time of the conveyance. See *Kamenar R.R. Salvage v. Ohio Edison Co.*, 79 Ohio App.3d 685, 689, 607 N.E.2d 1108, 1110 (3rd Dist.1992) (“a quit-claim deed transfers only those rights which a grantor has at the time of the conveyance”) (internal citations omitted).

⁸R.C. 5301.47(E) (defining “Root of Title”); *Pernick* at ¶¶ 44–45.

⁹R.C. 5301.02.

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