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John A. Chartier et al. v. Rice Drilling D LLC, et al.: The Land of Confusion

Let's say you are reviewing deeds in a chain of title as part of an Ohio Marketable Title Act (R.C. 5301.47 *et seq.*) (the "MTA") analysis, and you are looking for specific references to a prior mineral severance deed from 1944 wherein Annie Carpenter conveyed about 135 acres to Bessie Cook but reserved to herself "one-half interest in the oil, gas, and royalties under the premises described herein[]" (the "1944 Cook Deed"). Next, you see a 1948 deed from Bessie and Wylie Cook to Dale and William Doak with no exceptions or reservations. Then, you see a 1950 "corrective" deed of the property from Bessie and Wylie Cook to Dale Doak and William Doak stating: "excepting and reserving all the Pittsburgh #8 vein of coal and ½ of all oil and gas royalties under said lands together with mining rights and reservations made in the deed conveying said lands from Annie E. Carpenter to Bessie Cook." Two subsequent deeds of the property, in 1951 and 1976, contain this identical reservation language. Are these references sufficient to preserve the original 1944 severance from extinguishment—does this satisfy the three-step inquiry of *Blackstone v. Moore*?^[1]

In *John A. Chartier et al. v. Rice Drilling D LLC et al.*, 2023-Ohio-272, Case No. 21 BE 0046, the Court of Appeals of Ohio for the Seventh District, Belmont County, said no, agreeing with the trial court that the mineral severance in the 1944 Cook Deed was extinguished.^[2] Why? Because these references in the 1951 and 1976 deeds were *ambiguous*, which automatically made them "general references" in the Court's estimation. The Court held:

However, we answer the second *Blackstone* query in the negative because the references to the oil and gas interests are ambiguous and therefore general references. Again, the exception and reservation language in the 1951 Dale Deed and the 1976 Whaley Deed pertain to oil and gas royalties and not to the oil and gas interests themselves as stated in the Cook Deed. Further, the latter part of the exception and reservation language in both Deeds is ambiguous. The latter part of the 1951 Dale Deed and 1976 Whaley

Deed excepts and reserves “mining rights and reservations made in the deed conveying said lands from Annie E. Carpenter to Bessie Cook.” This language could apply to mining rights and mining reservations, or mining rights and all of the other reservations made in the Cook Deed.[\[3\]](#)

In our previous analysis of *Erickson v. Morrison*,[\[4\]](#) we viewed the Ohio Supreme Court’s holding there as part of a larger, common-sense theme where the fundamental question was whether someone looking at the chain of title can figure out what interest the recital/reference was referring to. In *Erickson*, five deeds in the chain after the root of title contained a nearly identical reference to the language of the original 1926 mineral severance deed, but *none* contained any specific information, such as the book and page or grantor of that 1926 severance deed.[\[5\]](#) The fact that they were nearly identical to the original language was enough to preserve the interest under the MTA.[\[6\]](#)

Chartier just feels different. The question is not whether anyone reviewing would be able to determine what deed is being referenced; it seems clear that there was only one deed from Annie Carpenter to Bessie Cook. Rather, the Court differentiates the language of the 1951 and 1976 deeds from the 1944 Cook Deed, pointing out how the 1944 Cook Deed contained numerous different reservations, which purportedly made the 1951 and 1976 deeds unclear.[\[7\]](#) However, a side-by-side comparison shows the reservations are not so dissimilar after all:

1944 Cook Deed Severance

ALSO EXCEPTING AND RESERVING to the GRANTOR [Annie Carpenter], herein, her heirs and assigns, one-half of all oil, gas, and royalties under the premises described herein.

1951 and 1976 References

excepting and reserving all the Pittsburgh #8 vein of coal and ½ of all oil and gas royalties under said lands together with mining rights and reservations made in the deed conveying said lands from Annie E. Carpenter to Bessie Cook

Interestingly, the *Chartier* Court cites *O’Kelley v. Rothenbuhler*[\[8\]](#) for the proposition that a prior deed reference’s susceptibility to more than one interpretation is further evidence of its ambiguity and, in

turn, its general nature.^[9] In *O'Kelley*, the Seventh District found that reference to “and also excepting the oil and gas minerals including coal underlying the same heretofore conveyed” was a general reference under the MTA because (1) it was not verbatim of the original severance language and (2) the phrase “heretofore conveyed” “sounds to the reader like vague, boilerplate language excepting reservations that may or may not exist....”^[10] *O'Kelley*’s reservation, however, appears considerably less specific than that in *Chartier*.^[11]

Chartier highlights that there are two types of references that will be considered specific (or not “general”): (1) those that are very detailed (deed book, page, grantor, grantee, and interest severed), and (2) those that are identical, or nearly identical, to the original language. If the reference is somewhere in between, all bets are off because a determination of ambiguity becomes possible.

Is this the beginning of the end of the common-sense approach from *Erickson*? Unclear. Perhaps attempting to synthesize trends in these cases is premature; with no bright-line rules, each case stands on its own. Nevertheless, *Chartier* seems to heighten the scrutiny compared to its predecessors. And so it would help if the Ohio Supreme Court were to weigh in. Doing so would give the Supreme Court the opportunity to harmonize the cases in this area—including *Senterra, Ltd. v. Winland*, where the Supreme Court held that a 1971 root-of-title deed’s reference to a prior reservation of a one-quarter interest in oil and gas to George Russell affirmatively preserved/created that interest even though the chain of title prior to that root of title evidenced that Mr. Russell **conveyed away his interest**. See *Senterra, Ltd. v. Winland*, 2022–Ohio–2521.

For more information, please contact the author or any member of Frost Brown Todd’s [Oil, Gas & Minerals](#) industry team.

^[1] 155 Ohio St. 3d 448, 2018–Ohio–4959, 122 N.E.3d 132, ¶ 12

^[2] A copy of this opinion can be found [here](#).

^[3] *Id.*, ¶ 52.

[4] 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132. You can read an analysis of on *Erickson v. Morrison* [here](#).

[5] See *Erickson*, ¶ 15.

[6] *Id.*, ¶ 32.

[7] *Chartier*, ¶ 52.

[8] 7th Dist. No. 20 MO 0009, 2021-Ohio-1167, 171 N.E.3d 775, ¶ 47, *reconsideration overruled sub nom. O'Kelley v. Rothenbhuler*, 7th Dist. Monroe No. 20 MO 0009, 2021-Ohio-2488, ¶ 47, and *appeal not allowed*, 165 Ohio St.3d 1456, 2021-Ohio-4033, 176 N.E.3d 758, ¶ 47. My article on this case can be found [here](#).

[9] *Chartier*, ¶ 52.

[10] *Id.*, ¶ 48.

[11] See *supra*.

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