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The MTA Equation – Dougherty v. ABARTA Oil & Gas: Ohio’s 5th District Does the Math

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In [Dougherty v. ABARTA Oil & Gas Co., Inc.](#), 2023–Ohio–1279 (7th Dist.) (April 18, 2023), Ohio’s Fifth District Court of Appeals held that nearly identical reservation language, alongside volume and page references to the original severance deed, constituted a “specific reference” under the Ohio Marketable Title Act, R.C. 5301.47 *et seq.* (the “MTA”) sufficient to preclude the 1964 deed from being a root of title.

In *Dougherty*, the original 1954 severance deed, recorded at Volume 227, Page 497 in Guernsey County, contained the following reservation:

Excepting and reserving to the Grantors, their heirs and assigns all oil and gas lying under and within the premises hereby conveyed with the right to enter on said premises, to drill for, develop, produce, store and remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may be necessary therefor.^[1]

The question before the *Dougherty* Court was whether the agreed-upon root of title, a 1964 deed from Robert S. Peters to Capstone’s predecessor, Seaway Coal Company, was, in fact, a root of title. Did it create the interest claimed (i.e., ownership free and clear of the 1954 deed’s mineral severance)?^[2] The 1964 deed contained the following language:

EXCEPTING AND RESERVING, as previously accepted[sic] and reserved, all oil and gas lying under in within the premises hereby conveyed with the right to enter on said premises, to draw for, develop, produce, store in remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may

be necessary therefore.

Deed References: Vol. 419, Page 186, and Vol. 428, Page 438 Belmont County Deed Records; and Vol. 227, Page 497, and Vol. 266, Page 255, Guernsey County Deed Records.[\[3\]](#)

The Guernsey County Deed reference at Vol. 227, Page 497 is the 1954 deed creating the severance (quoted above). The other Guernsey County deed referenced in the 1964 deed (at Vol. 236–355 and after the 1954 deed) provides:

EXCEPTING AND RESERVING, as previously excepted and reserved, all oil and gas lying under and within the premises hereby conveyed with the right to enter on said premises, to drill for, develop, produce, store and remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may be necessary therefor.[\[4\]](#)

The trial court applied the *Blackstone* 3-step inquiry, found that the reference was general (under steps 1 and 2), but determined that it did **not** satisfy step 3: the “general reference does not contain a specific identification of a recorded title transfer * * * No specific identification is made of the parties to the reservation.”[\[5\]](#)

The Fifth District reversed and entered summary judgment for the severed interest holders, finding that the 1964 deed’s use of nearly identical reservation language as the 1954 deed, along with the prior deed references (i.e., the volumes and pages), were sufficient to specifically identify this prior title transaction (mineral severance) and preserve it.[\[6\]](#) The Fifth District rejected the implication that the names of the parties to that 1954 deed were a requirement for the reference to be specific, emphasizing that the Supreme Court of Ohio has never set a bright-light rule for what is required.[\[7\]](#)

For the Fifth District, the fundamental question was one of notice, finding that: the deed references “would provide a title searcher specific information regarding the identity of the persons who created the interest and retained title to the oil and gas with all the additional rights described in the reservation [and] the language of the reservation in all the deeds are virtually identical....”[\[8\]](#)

On February 8, 2023, I [wrote about](#) the Seventh District Court of Appeals' decision in *Chartier v. Rice Drilling D LLC*, 7th Dist. Belmont No. 21 BE 0046, 2023-Ohio-272, which determined that the 1951 and 1976 deeds that excepted and reserved a "½ of all oil and gas royalties...together with mining rights and reservations made in the deed conveying said lands from Annie E. Carpenter to Bessie Cook" was a general reference that did not preserve the mineral severance in the 1944 deed from Annie E. Carpenter to Bessie Cook.[\[9\]](#) To this author, *Chartier* veered away from the question of notice underpinning the decisions in *Blackstone* and *Erickson*.

The difference between *Chartier* and *Dougherty* isn't simply a question of reasonable notice. Armed with the names of the prior grantor and grantee and the knowledge of some reservation in the deed between them, a title reviewer would easily locate the 1944 severance deed at issue in *Chartier* and see what was severed ("one-half interest in the oil, gas, and royalties...."). Rather, it is the near-identical language of the excepting/reserving clause—and the fact that it excepts/reserves an identical interest to what was originally severed—that seems to have been the crucial factor for the *Dougherty* Court. In other words, there was no question about what interest the 1964 deed was referring to—it was "all oil and gas lying under and within" just as it was in the 1954 deed.

But were the deed volume and page references in the 1964 deed in *Dougherty* essential to the Court's holding? They were not necessary in *Erickson v. Morrison*,[\[10\]](#) which found that the repetition of nearly the same original severing language in five subsequent deeds was sufficiently specific—even without any deed book and page number. But would two repetitions without volume and page references after the original severance be enough? Three?

Until the Ohio Supreme Court tells us otherwise or the Ohio legislature amends the MTA, consider these cases guideposts on the long and treacherous road that runs through Ohio's oil patch. *Dougherty* illuminates the path forged by *Blackstone*, reaffirming the common-sense question of notice that permeates the MTA and the *Blackstone* 3-step inquiry.

For more information, contact the author of this article or any attorney with Frost Brown Todd's [Oil, Gas & Minerals](#) industry team.

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[1] *Dougherty*, ¶ 34.

[2] As you may recall, the Ohio MTA serves to extinguish any interests, encumbrances, etc. that appear **before** the root of title that are not sufficiently preserved during the 40-year period following that root of title, assuming there's an unbroken chain of title for that 40-year period. See e.g., *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, available [here](#).

[3] *Dougherty*, ¶ 5.

[4] *Id.*, ¶ 35.

[5] *Id.*, ¶ 40.

[6] *Id.*, ¶¶ 37-47.

[7] *Id.*, ¶ 43.

[8] *Id.*, ¶ 39.

[9] See *Chartier*, ¶ 52.

[11] 165 Ohio St.3d 76, 2021-Ohio-746, 176 N.E.3d 1, *reconsideration denied*, 163 Ohio St.3d 1430, 2021-Ohio-1721, 168 N.E.3d 526.

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