



Tatum et al v. Charmaine Dawson: Laches and the Search for Holders Under Ohio's DMA

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Does a delay in recording a certificate of transfer prejudice the surface owner in its search for mineral holders under the Ohio Dormant Mineral Act? Not here, and maybe not ever.

The Ohio Seventh District Court of Appeals' May 24, 2023 decision in *Julia and Linda Tatum et al. v. Charmaine Dawson et al.* involved the all-too-familiar dispute between mineral holders and surface owners over whether the latter observed "reasonable diligence" in its search for the severed mineral holders before service of the notice of abandonment under the Ohio Dormant Mineral Act (R.C. 5301.56) (the "ODMA") was made by publication.^[1] Because a Harrison County, Ohio lease recorded in 1982 indicated that the mineral holders lived in Uhrichsville (Tuscarawas County), Ohio, though not specifying an address, both the trial court and the Seventh District Court of Appeals agreed that the surface owner's failure to search Tuscarawas County to locate the mineral holders was a failure of the reasonable diligence requirements under *Gerrity v. Chervenak*, 162 Ohio St.3d 694, 2020-Ohio-6705, 166 N.E.3d 1230 and *Fonzi v. Brown and Fonzi v. Miller*, 169 Ohio St.3d 70, 2022-Ohio-901.^[2]

However, the surface owners also argued that they were absolved of their duty of reasonable diligence under the ODMA because the mineral holders—the daughters of Oscar Hines—didn't record a certificate of transfer conveying the severed mineral estate out of the estate until 2012.^[3] Hines died in 1987, and his estate was finalized in 1999.^[4] This, the surface owners asserted, constitute laches—a seldom-used equitable doctrine that operates to bar a claim or right where the holder of that right waits an unreasonable amount of time without excuse to assert that right, and others who rely on it are materially prejudiced.^[5] Laches operates similarly to a statute of limitations, but proving it requires satisfying four elements and, unlike a statute of limitations, the trial court has broad discretion in deciding whether it applies.^[6]

The trial court did not address the laches argument. The Seventh District, however, held that laches did not apply, primarily because the recording date of the certificate of transfer did not really matter under the circumstances, because the 1982 lease was still of record and explicitly stated that the holders resided in Uhrichsville, Ohio:

The Tuscarawas address in the oil and gas lease required Appellants to extend their public records search from Harrison County to Tuscarawas County. Had Appellees filed the certificate of transfer at any time prior to 2011, and included their Tuscarawas addresses in the certificate of transfer, Appellants would have likewise been required to extend their search from Harrison County to Tuscarawas County.^[7]

Laches did not apply in this case, but could it ever apply? As a long-standing (though seldom-used) equitable doctrine whose applicability is subject to a trial court's discretion, it certainly could. To this author, however, it seems unlikely.

For one, the ODMA already contains a 20-year time limit and specifies what actions operate to stop abandonment. Furthermore, laches includes an intent element that would seemingly require an unlikely factual scenario: a mineral holder intentionally waiting to record a title transaction instrument. This would place the severed mineral interest in danger of abandonment and basically ensures litigation—two scenarios most people want to avoid.

Thus, while *Tatum* is not seminal, it is an interesting and useful look at the applicability of this equitable doctrine in the ODMA reasonable-diligence context and, potentially, a preview of arguments to come in the ever-changing landscape of litigation under the ODMA.

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

^[1] JULIAN AND LINDA TATUM ET AL., v. CHARMAINE DAWSON ET AL., 2023-Ohio-1746. A full copy of the opinion is available [here](#).

^[2] *Id.*, ¶¶ 7, 31.

[\[3\]](#) *Id.*, ¶¶ 8–11, 35.

[\[4\]](#) *Id.*

[\[5\]](#) *Id.*, ¶ 32.

[\[6\]](#) *Id.* (The four elements are: (1) unreasonable delay or lapse of time in asserting a right; (2) absence of an excuse for the delay; (3) knowledge, actual or constructive, of the injury or wrong; and (4) prejudice to the other party.)

[\[7\]](#) *Id.*, ¶ 36.

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