



# Thomson v. K & R Conservation, LLC: Ohio's Ninth District Court of Appeals Gives Fonzi Two Thumbs Up

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On the last day of 2024, Ohio's Ninth District Court of Appeals entered the realm of the DMA with an opinion addressing the now-familiar question of whether a surface owner's attempt to abandon previously severed minerals under the Ohio Dormant Mineral Act (DMA), R.C. 5301.56, was effective. The plaintiff and appellant, K & R Conservation, LLC, was the surface owner of approximately 200 acres located in Harrison County, Ohio.<sup>[1]</sup> In 1967, then-owners, Alec and Martha Thomson, conveyed 160 of these acres to Island Creek Coal Company and excepted and reserved to themselves the oil and gas.<sup>[2]</sup> The Thomsons also reserved for themselves the oil and gas out of a conveyance of the remaining 40-acre parcel in 1968.<sup>[3]</sup> K & R eventually acquired title to the surface of this property.<sup>[4]</sup>

In 2014, K & R searched Harrison County records to pursue its DMA abandonment, finding a Uniontown, Summit County, Ohio address associated with Alec and Martha Thomson.<sup>[5]</sup> K & R attempted certified mail service of its notice of intent to abandon at this address, which was returned unclaimed.<sup>[6]</sup> K & R immediately thereafter served notice via publication in the Harrison News-Herald.<sup>[7]</sup> K & R recorded its affidavit of abandonment on June 25, 2014, and an affidavit of facts on July 21, 2014, as the notice of failure to file under subsection (H)(2).<sup>[8]</sup>

With regard to the 1968-reserved oil and gas on the 40 acres, K & R undertook the same DMA procedure in 2017, attempting certified mail service at the same address and then serving by publication.<sup>[9]</sup> In both cases, **K & R did not attempt to search the records of Summit County, Ohio,**<sup>[10]</sup> despite Summit County being the Thomson's last known county of residence.

Factually aligned with the Ohio Supreme Court decisions in *Gerrity* <sup>[11]</sup> and *Fonzi* <sup>[12]</sup>, K & R's failure to search Summit County was fatal to its DMA abandonment:

In accordance with *Gerrity* and *Fonzi* and based on our *de novo* review, under the undisputed facts of this case, K&R Conservation did not exercise reasonable diligence to identify the holders of the mineral rights. Those facts include: (1) K&R Conservation knew the names of the original holders of the 1967 and 1968 Reservations; (2) K&R Conservation had a specific address for them in Summit County of 621 Sleepy Hollow Drive, Uniontown, Ohio; (3) certified mail sent to that address came back unclaimed; and (4) K&R Conservation did not search any court, property, or other public records for the names Alec Thomson or Martha Thomson in Summit County, Ohio before resorting to service by publication in Harrison County.<sup>[13]</sup>

As was the case in *Fonzi*, it was the surface owner's failure to attempt to search the public records of a county where the mineral holders were known to last reside that was fatal—not whether that search would have definitively yielded holder identification/location information. Nevertheless, the Ninth District Court of Appeals did note Alec Thomson's estate filings were recorded in Summit County and set forth the names and locations of his heirs.<sup>[14]</sup>

As referenced at the beginning of this article, Ohio's Ninth District Court of Appeals has not, until now, addressed this DMA issue. But with binding Ohio Supreme Court decisions—and a wealth of lower appellate decisions addressing myriad factual scenarios—Ohio's jurisprudence is now well-developed, and the court in *Thomson v. K & R Conservation, LLC* had ample guidance. The Ninth District's decision also demonstrates that choosing a non-traditional venue (i.e., a county other than where the property is located) for DMA claims likely makes little difference in the outcome in these circumstances; *Fonzi* is "Correctamundo!" in all of Ohio's 88 counties.

What remains to be seen is how the jurisprudence of *Gerrity*, *Fonzi* and their progeny aligns with the decisions and logic applied in *Cardinal Minerals, LLC v. Menno D. Miller*, 2024-Ohio-2133. Our article on *Cardinal* may be found [here](#). Stay tuned.

For more information on this decision and other DMA-related jurisprudence, please contact the author or any attorney with Frost

Brown Todd's [Oil, Gas & Minerals](#) team.

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[1] The Ohio Rules of Civil Procedure do not limit venue for DMA cases to the county where the property is located. See Civ. R. 3(C).

[2] *Thomson v. K & R Conservation, LLC*, ¶ 3.

[3] *Id.*

[4] *Id.*, ¶ 4.

[5] *Id.*, ¶ 7.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*, ¶ 8.

[10] *Id.*, ¶ 24.

[11] *Gerrity v. Chervenak*, 2020-Ohio-6705. Article on *Gerrity* available [here](#).

[12] *Fonzi v. Brown*, 2022-Ohio-901. Article on *Fonzi* available [here](#).

[13] *Thomson*, ¶ 29.

[14] *Id.*

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