

Oil and Gas Alert: Supreme Court of Ohio Clarifies Ohio Marketable Title Act

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On December 13, 2018, the Supreme Court of Ohio clarified the preservation of interests under the Ohio Marketable Title Act (OMTA). See *Blackstone v. Moore*, Slip Opinion No. 2018-Ohio-4959. In its decision, the Court held that under the OMTA, a deed reference to a previously reserved royalty interest is sufficiently-specific to preserve that royalty interest where the reference identifies the type of interest created and the person to whom the interest was granted.

You can read the decision [here](#).

BACKGROUND

The Kuhns conveyed real property to the Browns in 1915, reserving a one-half interest in oil and gas royalties. In 1969, the Browns' successor-in-interest conveyed the same property to David Blackstone by a deed that referenced the Kuhns' royalty interest as follows:

Excepting the one-half interest in oil and gas royalty previously excepted by Nick Kuhn, their [sic] heirs and assigns in the above described sixty acres.

The Blackstones sued the Kuhns' heirs in 2012, claiming that the Ohio Dormant Mineral Act (ODMA) and the OMTA terminated the royalty interest. The trial court ruled in the Blackstones' favor, but the Seventh District Court of Appeals reversed, holding that the reference to the Kuhns' royalty interest in the 1969 deed was specific and thus preserved the royalty interest under the OMTA.[1]

On appeal to the Supreme Court of Ohio, the Blackstones urged that the reference to the Kuhns' royalty interest in the 1969 deed was not sufficiently-specific because the reference did not include the volume and page number of the instrument originally creating the royalty interest. Alternatively, the Blackstones suggested that at a minimum, the deed reference should have included both the name of the grantor and grantee and the instrument's recording date.

DECISION

Disagreeing with the Blackstones, the Court held that the reference to the Kuhns' royalty interest in the 1969 deed was specific and thus preserved the royalty interest. The Court first turned to the statutory language. Under the OMTA, marketable record title is taken subject to interests inherent in the record chain of title, "provided that a general reference *** to *** interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such *** interest." [2]

The Court held that determining whether a reference to an earlier interest was general or specific under the statute involves a three-step analysis. First, is there a reference to an interest described within the chain of title? Two, is the reference a "general reference"? Three, if the answers to the first two questions are yes, does the general reference contain a specific identification of a recorded title transaction?

Here, the reference to the Kuhns' royalty interest was specific, rather than general, because it included "details and particulars about the interest in question," the interest was "accurately referenced," and was free from ambiguity. Namely, the reference included the type of interest (i.e., a "one-half interest in oil and gas royalty") and identified the name of the original reserving party (i.e., "Nick Kuhn, their [sic] heirs and assigns"). And because the interest was specific, it was unnecessary for the Court to proceed to the third question—whether the general reference contained a specific identification of a recorded title transaction.

While the Court acknowledged the Blackstones' policy arguments for requiring a volume/page or date reference as part of the specificity analysis, the Court noted that those arguments are best directed to the legislature. These items were not required based on the statute's plain language.

CONCURRENCE

In a concurring opinion, Justice DeGenaro wrote that the scope of the Court's opinion was "narrow" and "should not be read to implicitly hold that the more general [OMTA] continues to apply to mineral interests following the enactment of the [ODMA]—a more specific statute for providing for the termination of those interests." While not an issue raised on appeal, Justice DeGenaro—who departs the Court at the end of this year—questioned whether the OMTA still applies to mineral interests after the passage of the ODMA.

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[1] The court of appeals determined the Kuhn heirs effectively preserved their interests under the ODMA. The Blackstones did not challenge that determination.

[2] R.C. 5301.49(A).