Supreme Court of Ohio Further Clarifies Exception Under the Marketable Title Act in *Erickson v. Morrison*

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On March 16, 2021, the Supreme Court of Ohio expanded upon its prior decision in *Blackstone v. Moore*, 2018-Ohio-4959, once again addressing the exception under the Marketable Title Act, 5301.47, *et seq*. (the MTA), found in R.C. 5301.49(A). R.C. 5301.49(A) provides that 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." In *Erickson v. Morrison*, Slip Opinion No. 2021-Ohio-746, the relevant land was subject to a severance of all of the coal, gas, and oil (the Severed Interest). The surface owners argued that the Severed Interest was extinguished under the MTA, because references to the Severed Interest in their root of title and subsequently filed deeds were not specific under R.C. 5301.49(A). The successors to the Severed Interest argued to the contrary, claiming that the references in these deeds, despite not identifying the owner of the Severed Interest, were specific and thus prevented the extinguishment of the Severed Interest under the MTA. The Court ultimately agreed with the successors, holding that the reference in the deeds to the Severed Interest were specific, and therefore the Severed Interest was not extinguished.

The Severed Interest was first reserved in 1926 by James and Rose Logan. The Logans subsequently sold the Severed Interest to C.L. Ogle, and C.L. Ogle later died survived by Sally A. Tonning, W. Randall Erickson, and Kathleen Erickson (collectively, the Ogle Heirs). In 2017, the Ogle Heirs filed an action in the Guernsey County Common Pleas Court against the surface owners, Paul and Vesta Morrison, to have their ownership of the Severed Interest judicially confirmed. The trial court found in favor of the Ogle Heirs, but the surface owners appealed the decision to the Fifth District Court of Appeals, arguing that pursuant to the Supreme Court of Ohio's prior decision in *Blackstone v. Moore*, 2018-Ohio-4959, references to the Severed Interest in their root of title and subsequent deeds were general, and thus did not prevent the extinguishment of the Severed Interest. The Fifth District Court of Appeals agreed with the surface owners, and reversed the trial court's

decision.

The Supreme Court of Ohio accepted the Ogle Heirs' appeal to determine whether a reference to an interest in the chain of title that does not include the name of the interest owner (i.e., a reference that simply identifies what the severed interest is) is general or specific under R.C. 5301.49(A).[1] The Ogle Heirs maintained that neither the language of the MTA, nor the Court's prior decision in *Blackstone* require a reference to an interest to identify the interest owner or include the recording information of the severance deed, in order to prevent the extinguishment of the interest. Arguing the opposite, the surface owners relied on the *Blackstone* decision, which held that a reference to an interest that identified both the nature of the interest and the interest owner was specific under R.C. 5301.49(A). Based on that decision, the surface owners argued that a reference only identifying the nature of the interest was not specific, and thus could not prevent the interest's extinguishment.

Rejecting the surface owners' argument, the Court clarified its decision in *Blackstone*. Although *Blackstone* had held that a reference that identified both the nature of the interest and the name of the interest owner was specific, the Court here clarified that its earlier holding should not be read as requiring a reference to an interest to include the name of the interest owner in order to prevent extinguishment under the MTA. Instead, applying the test it laid out in *Blackstone*, the Court found the references in the surface owners' root of title and subsequent deeds to be specific. It based this finding on the plain language of the statute and the ordinary meaning of the words "general" and "specific." The references in these deeds were not vague references to prior reservations that may or may not exist. "Rather, the [surface owners'] root of title and subsequent conveyances are made subject to a specific, identifiable reservation of mineral rights recited throughout their chain of title using the same language as the recorded title transaction that created it." In addition, the Court also mentioned the fact that the General Assembly had amended other provisions of the MTA in 1988 to require a notice of preservation to include the name of the interest owner, a description of the affected property, and the recording information of the document creating the interest, but did not amend R.C. 5301.49(A) to require that same specificity.

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[1] The Court had also accepted review to determine whether a property owner's fee simple interest is preserved under the MTA where the party seeking to have the interest extinguished had actual knowledge of the interest. However, because the case was resolved by the Court's interpretation of R.C. 5301.49(A), the Court found it unnecessary to address this question.