

IN THE COURT OF COMMON PLEAS
NOBLE, OHIO

2013 MAR 20 PM 1:45

JON D. WALKER, JR.
Plaintiff

VS
JOHN R. NOON
Defendant

CASE NO. 212-0098

JOURNAL ENTRY

This matter is before the Court upon cross motions for summary judgment. The issue is ownership of oil and gas interests.

The facts are not in dispute. Defendant, the owner of the fee, conveyed the surface and reserved the oil and gas (plus other minerals) by deed recorded July 27, 1965. Subsequent deeds in 1970 and 1977 conveyed the surface, specifically noting that the oil and gas had previously been reserved. All other surface transfers post date March 22, 1992. There have been no subsequent conveyances of the oil and gas by the Defendant. No claim to preserve a mineral interest was filed before March 22, 1992. Plaintiff claims his title by virtue of Fiduciary Deed recorded May 14, 2009.

Summary judgment is governed by Rule 56.

Ohio Revised Code Section 5301. 56 effective March 22, 1989, provides in pertinent part:

• • •

(B) (1) Any mineral interest held by an person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies.

• • •

(c) Within the preceding twenty years, one or more of the following has occurred:

(I) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located:

• • •

(2) A mineral interest shall not be deemed abandoned under

division (B) (1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section.

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B)(1) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with sections 317.18 to 317.201 and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

- (a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;
- (b) Otherwise complies with section 5301.52 of the Revised Code;
- (c) States that the holder does not intend to abandon, but instead to preserve, his rights in the mineral interest.

Revised Code Section 5301.47(F) provides:

(F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

The present case rises or falls based on the interpretation of R.C. Section 5301.56(B)(1)(C)(i) No other subparagraphs of R.C. Section 5301.56(B)(i) are applicable.

The Question becomes, do the surface transfers in 1970 and 1977 count as "title transactions"? The Court believes the answer to be no. They would be within the 20 year period prior to March 22, 1989. However, to be "title transactions", they would need to affect an interest in the land (Sec. 5301.47(F)), and for purposes of this case that interest is the mineral interest (Sec. 5301.56 (B)(1)(c)(i)). While the surface transfers reference the mineral reservation, those transfers do not affect the mineral interest. See, Wiseman v. Potts, Morgan County C. P. Case No. 08 CV 0145 (June 29, 2010).

The Court is cited to Riddell v. Layman, 5th Dist. No. 94 CA 114, 1995 WL

498812 for a different interpretation. But a close reading of that case reveals that the "title transaction" in question was the original deed wherein the fee was split, transferring part to the grantee but reserving 49% of the oil and gas to the Grantors. Clearly in that case title to the mineral interest was affected by that "title transaction".

Applying the Statutes and Case Law to the undisputed facts, the Court finds that Plaintiff is entitled to Summary Judgment and the Defendant is not.

Any discussion of R.C. 5301.56, effective June 30, 2006 is moot, because as of June 30, 2006, any interest of Defendant in the oil and gas had been abandoned. See Wendt v. Dickerson, Tuscarawas County C.P. Case No. 2012 CV 020135, 02/21/2013.

The motion of Plaintiff for summary judgment is granted. Defendant's request for summary judgment is overruled.

It is ordered, and the Court declares that:

(1) Plaintiff is the true and rightful owner of the oil and gas underlying the subject real estate;

(2) The Defendant has no interest in the subject oil and gas, no oil and gas reservation, and no oil and gas rights under the subject real estate;

(3) Title to the oil and gas underlying the subject real estate is quieted in favor of the Plaintiff; and,

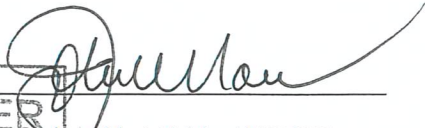
(4) Counsel for Plaintiff shall provide the Court with a journal entry with the legal description of the subject property quieted, which is sufficient for recording in the office of the Noble County Recorder.

(5) Costs assessed to the Defendant.

The Court finds there is no just reason for delay.

FINAL APPEALABLE ORDER

Copy to be sent, per Civil Rule 5 (B),
to all parties not in default


JOHN W. NAU, JUDGE