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Shilts v. Beardmore: Firming Up Notice Under Ohio's Dormant Mineral Act

Though it has been over a year since the Ohio Supreme Court decided several cases relating to Ohio's Dormant Mineral Act, questions remain as to several issues, including application of the statute's notice provisions. Fortunately, on March 5, 2018, Ohio's Appellate District Court for the Seventh District (Monroe County) began chipping away at the notice question by confirming that the law does not require futility when it comes to the notice standard under the 2006 Dormant Mineral Act (O.R.C. § 5301.56, eff. 2006) (the "2006 DMA").

In *Shilts v. Beardmore, et al.*, the appellate court examined a reservation of an interest in oil and gas contained in a deed from 1914, which excepted and reserved to Mary E. Beardmore and others the "6/7 of the 1/2 royalty in oil and gas" (the "Beardmore Interest"). 2018-Ohio-863 (7th Dist.) (March 5, 2018). Save for a few later deeds reciting the severance, the surface chain of title record was devoid of any activity preserving the interest.

Fast forward to October of 2012, nearly a century after creation of the Beardmore Interest, the surface owner, Richard F. Shilts, initiated the abandonment procedures outlined under the 2006 DMA to clear his mineral title. After a search to identify and locate last known heirs revealed no leads, Mr. Shilts published a notice of intent to declare the Beardmore Interest abandoned in the Monroe County Beacon as permitted under O.R.C. § 5301.56(E). When the publication elicited no response, the surface owner recorded an affidavit of abandonment and, in January of 2013, entered into an oil and gas lease with Antero Resources Appalachian Corporation ("Antero"). Despite Mr. Shilts having completed the procedures of the 2006 DMA, Antero suspended a portion of the royalties due under the new lease, requiring him to quiet-title to the Beardmore Interest in the Monroe County Court of Common Pleas. Similar to the notice of abandonment, Mr. Shilts served the complaint on the unfindable Beardmore heirs via publication. However, this time, the publication elicited a response from an heir, who responded to the complaint and challenged the abandonment. The notice procedures under the 2006 DMA became a cornerstone issue at both the trial and appellate level of this case.

The trial court approved of the surface owner's use of 2006 DMA in this case and found the notice by publication sufficient, ruling that the Beardmore Interest had been adequately abandoned upon completion of the statutory procedures. The solitary Beardmore heir appealed that decision, and other findings of the trial court, arguing that notice by publication was not sufficient, and that service by certified mail was required.

The appellate court pointed out that the language of O.R.C. § 5301.56(E)(1) permits notice of an intent to declare abandonment by publication when notice cannot be completed through certified mail. The court rejected the mineral holder's argument that "Ohio law requires a 'whatever it takes' standard, where service in all cases must be attempted by certified mail." Rather, the appellate court closely examined the notice requirements of the 2006 DMA and articulated a standard of "reasonable diligence" with respect thereto.

In this case, "reasonable diligence" meant the surface owner had attempted to locate heirs through (1) a public records search and a review of any relevant probate records in Monroe County; (2) an online search; (3) review of the deeds contained in the chain of title; and (4) a search of the Ohio Department of Natural Resources website. The appellate court held that "[i]t is apparent from the record that the [surface owner] took reasonable efforts to locate the [Beardmore] heirs in order to serve by publication." The appellate court affirmed the trial court's order confirming

abandonment of the Beardmore Interest.

Under a “best practices” approach, and as the notice requirement under the 2006 DMA becomes more clear, surface owners seeking abandonment of ancient oil and gas severances may be best served to include a statement in the notice of abandonment and eventual affidavit of abandonment detailing all reasonable efforts made to identify and locate last known heirs. Such practice may counter any later claims that the surface owner proceeded “straight to publication” such that the abandonment procedures were invalid. While the above actions may not be exhaustive in all scenarios, this latest ruling gives operators, surface owners, and practitioners a little more guidance on the “reasonable diligence” standard under the 2006 DMA. However, it is notable that the Ohio Supreme Court has not yet weighed in on the reasonable diligence standard (or any other standard) under the 2006 DMA’s notice provisions. So, there is possibly more to come.

For a copy of the *Shilts* opinion, or for any additional insights on how the Dormant Mineral Act continues to impact your ownership or development plans in Ohio, do not hesitate to contact the Energy Group with Dickie, McCamey & Chilcote, P.C.

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