

Ohio Supreme Court Finds No Conflict Between MTA and DMA in Reuniting Mineral Interests¹

By J. Kevin West, Dallas F. Kratzer III, and Andrea S. Frenn, Steptoe & Johnson PLLC

On December 2, 2020, the Supreme Court of Ohio issued its opinion in *West v. Bode*, 2020-Ohio-5473, and determined that either the Marketable Title Act (“MTA”) or the Dormant Mineral Act (“DMA”) may be used to reunite a severed mineral interest with the surface property subject to that interest.

In *West v. Bode*, surface owners Wayne and Rusty West sought a judgment declaring that the MTA extinguished a severed oil and gas royalty interest relating to their property. Three mineral interest holders intervened and requested a judgment declaring that they owned a fraction of the oil and gas royalty interest. The Monroe County Court of Common Pleas awarded summary judgment to the mineral interest holders because, in its view, the DMA and the MTA irreconcilably conflicted with one another and, under those circumstances, the more specific DMA superseded the MTA in the mineral interest context.

The Seventh District Court of Appeals reversed, concluding that the MTA and the DMA were “co-extensive alternatives.” In its holding, the Seventh District Court of Appeals stated that the applicability of the MTA or DMA in a particular case “depends on the time passed and the nature of the items existing in the pertinent records ... If the claim is extinguishment under the MTA, then the 40-year provision and the test applicable thereto apply; if the claim is abandonment under the DMA, those statutory procedures and 20-year test of R.C. 5301.56 apply.” As such, the Seventh District Court of Appeals did not view the MTA and DMA as irreconcilable and mutually exclusive of each other. Thus, the Supreme Court of Ohio was asked to decide whether both the MTA and DMA apply to severed mineral interests, or whether the statutes are irreconcilable, and therefore the specific statute of the DMA supersedes and controls over the general MTA.

The Supreme Court of Ohio affirmed the decision of the Seventh District Court of Appeals and held that there is no irreconcilable conflict between the general provisions of the MTA as applied to severed mineral interests, and the DMA and both acts retain effect. In reaching its conclusion, the Court relied on the same rule as the Seventh District Court of Appeals that if a general provision (the MTA) conflicts with a special provision (the DMA), they shall be construed, if possible, to give effect to both. Otherwise, if the conflict between the provisions is irreconcilable, the special provision prevails as an exception to the general provision.

¹ These materials are public information and have been prepared solely for educational purposes. These materials reflect only the personal views of the authors and are not individualized legal advice. It is understood that each case is fact-specific, and that the appropriate solution in any case will vary. Therefore, these materials may or may not be relevant to any particular situation. Thus, the authors and Steptoe & Johnson PLLC cannot be bound either philosophically or as representatives of their various present and future clients to the comments expressed in these materials. The presentation of these materials does not establish any form of attorney-client relationship with the authors or Steptoe & Johnson PLLC. While every attempt was made to ensure that these materials are accurate, errors or omissions may be contained therein, for which any liability is disclaimed.

While the Court noted that the MTA and the DMA were certainly different—observing that the MTA has a longer lookback period and is self-executing, and the DMA has different saving events and notice requirements—it held that those differences were reasonable and reconcilable. The Court further observed that they shared a central purpose of “simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title,” and a mineral interest holder could comply with both statutory schemes to avoid losing any mineral interest. The Court stated that it was reasonable to believe that the legislature intended for the DMA to provide surface owners an *additional* mechanism to accomplish reunification of dormant mineral interests with the surface estate in order to promote the use of natural resources when those interests could not be extinguished under the MTA.

Additionally, the Court cited its decision in *Blackstone v. Moore*, 2018-Ohio-4959, explaining that, in that decision, it “expressly affirmed” a judgment preserving mineral interest under the MTA.

Lastly, it is important to note that the Court declined to consider whether owners of severed mineral interests are entitled to due process of law before being deprived of that interest. As the issue of due process was not raised by appellants in the trial court or court of appeals, the Court did not render any opinion on the merit of that argument.