

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2013 FEB 21 PM 4 33
JEANNE M. STEPHEN
CLERK OF COURTS

CHRISTOPHER WENDT, et al.,	:	CASE NO. 2012 CV 02 0135
PLAINTIFFS	:	JUDGE
	:	EDWARD EMMETT O'FARRELL
	:	
	:	<u>JUDGMENT ENTRY - ORAL HEARING</u>
	:	<u>CONDUCTED ON 1/7/2013 PERTAINING</u>
	:	<u>TO PLAINTIFFS' MOTION FOR</u>
	:	<u>SUMMARY JUDGMENT FILED 12/3/2012</u>
	:	<u>AND THE DICKERSON DEFENDANTS'</u>
	:	<u>MOTION FOR SUMMARY JUDGMENT</u>
	:	<u>AGAINST PLAINTIFFS FILED</u>
	:	<u>12/17/2012- MOTIONS CONSIDERED -</u>
	:	<u>PLAINTIFFS' MOTION FOR</u>
	:	<u>SUMMARY JUDGMENT GRANTED,</u>
	:	<u>IN PART, AS IT PERTAINS TO COUNT</u>
	:	<u>ONE (DECLARATORY JUDGMENT),</u>
	:	<u>COUNT TWO (QUIET TITLE), AND</u>
	:	<u>COUNT THREE (INJUNCTION), AND</u>
	:	<u>OVERRULED, IN PART, AS IT</u>
	:	<u>PERTAINS TO REMAINING CLAIMS</u>
	:	<u>ALLEGED IN PLAINTIFFS' COMPLAINT -</u>
	:	<u>DICKERSON DEFENDANTS' MOTION</u>
	:	<u>FOR SUMMARY JUDGMENT AGAINST</u>
	:	<u>PLAINTIFFS OVERRULED-ORDERS</u>
JUDITH DICKERSON, et al.,	:	<u>ENTERED</u>
DEFENDANTS	:	

This matter was further considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 1/7/2013 on the Court's regular Oral hearing motion docket relative to the following:

- ◆ **Plaintiffs' Motion for Summary Judgment** filed 12/3/2012
- ◆ **Appendix to Plaintiffs' Motion for Summary Judgment** filed 12/3/2012
- ◆ **The Dickerson Defendants' Motion for Summary Judgment Against Plaintiffs** filed on 12/17/2012
- ◆ **Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment** filed on 1/4/2013
- ◆ **The Dickerson Defendants' Reply to Plaintiffs' Motion for Summary Judgment** filed on 1/4/2013
- ◆ **Defendants' Notice of Supplemental Authority** filed on 1/9/2013
- ◆ **1/7/2013 Oral Hearing**

Plaintiffs were represented in the Courtroom by **David Butz, Nathan Vaughan**, and **Matthew W. Onest**, Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A., Attorneys at Law, Canton, Ohio. Defendants Judith A. Dickerson, Mary Louise Foster, Elaine F. Harris, Celia M. Dickerson, Richard H. Dickerson, Robert J. Dickerson, Raymond Dickerson, Constance Clark, Deborah Snelson, Misty Engstrom, Ronald K. Dickerson, Barbara K. Dickerson, John L. Dickerson, Wanda Dickerson, (collectively referred to as the "Dickerson Defendants") were represented in the Courtroom by **Paul B. Hervey** and **Jillian Daisher**, Fitzpatrick, Zimmerman & Rose Co., L.P.A., Attorneys at Law, New Philadelphia, Ohio.

The Court

FINDS that Plaintiffs Christopher Wendt and Veronica Wendt filed a Complaint against the Dickerson Defendants and Chesapeake Exploration, LLC. Count One of Plaintiffs' Complaint for **Declaratory Judgment** alleges that Plaintiffs are entitled to a declaration regarding their ownership of certain mineral rights. Count Two of Plaintiffs' Complaint alleges a cause of action for **Quiet Title** and requests that this Court quiet title to the mineral rights of real estate owned by Plaintiffs. Count Three of Plaintiffs' Complaint alleges a cause of action for **Injunction** and requests an injunction prohibiting Defendants from interfering, objecting or otherwise preventing Plaintiffs from leasing, conveying, or transferring their rights to the oil and gas underlying the real estate, or from taking any action under any existing leases. Count Four of Plaintiffs' Complaint alleges a cause of action for **Slander of Title**. Count Five of Plaintiffs' Complaint alleges a cause of action for **Unjust Enrichment - Quantum Meruit**. Count Six of Plaintiffs' Complaint alleges a cause of action for **Trespass**. Count Seven of Plaintiffs' Complaint alleges a cause of action for **Negligence / Negligence Per Se**. Count Eight of Plaintiffs' Complaint alleges a cause of action for **Potential Interference with Business Relationships**. Count Nine of Plaintiffs' Complaint alleges a cause of action for **Constructive Trust**.

FINDS that Plaintiffs' dismissed their claims against Defendant Chesapeake Exploration, L.L.C. only, as provided in the Parties' Stipulated Dismissal Entry filed on 1/8/2013.

FINDS that the Dickerson Defendants filed a Counterclaim against Plaintiffs Christopher and Veronica Wendt, which alleges two Counterclaims for **Slander of Title** and **Intentional Interference with Business Relationships**.

FINDS that Plaintiffs request summary judgment in their favor against the Dickerson Defendants under Civ. R. 56. Plaintiffs argue that there is no genuine issue as to any material fact as to the application of the 1989 Ohio Dormant Mineral Act, which extinguished the Dickerson Defendants' mineral reservation, and that Plaintiffs are entitled to judgment as a matter of law. Plaintiffs argue that the Dickerson Defendants' mineral interests were abandoned under the Dormant Mineral Act as of 1992. Plaintiffs argue that since the Defendants abandoned their mineral interests, Plaintiffs are entitled to declaratory judgment. Plaintiffs argue that they are also entitled to summary judgment on their claims for Quiet Title, Injunction, Slander of Title, Unjust Enrichment, Intentional Interference with Business Relationships, and Constructive Trust, based upon the application of the 1989 Dormant Mineral Act.

FINDS that the Dickerson Defendants request summary judgment in their favor under Civ. R. 56. The Dickerson Defendants argue that they are the rightful owners of the mineral rights that are the subject of this dispute. The Dickerson Defendants argue that Plaintiffs knew that they did not own the mineral rights when they purchased the property. The Dickerson Defendants do not seek summary judgment on their slander and intentional interference claims; however, they ask the Court

to issue 1) a declaration and determination that the Dickerson Defendants are the rightful holder of fee simple title to the mineral rights on the Property, and that the Plaintiffs be declared to have no estate, right, title or interest in the mineral rights; 2) a judgment forever enjoining the Plaintiffs from claiming any estate, right, title or interest in mineral rights on the property; and 3) an order to the Harrison County Recorder striking the Plaintiffs' Affidavit of Abandonment from the Deed Records of Harrison County.

FINDS that under Civ. R. 56(C), a summary judgment may be granted if (1) no genuine issue exists as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) "it appears that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the party against whom the Motion for Summary Judgment is made, that conclusion is adverse to the non-moving party." *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Likewise, Civ. R. 56(C) provides that summary judgment shall not be rendered if it appears from the evidence that there is a genuine issue of fact that remains to be litigated.

FINDS that the moving party has the burden of showing that no genuine issue exists as to any material fact. *Harless v. Willis Day Warehousing Co., Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). The moving party requesting a summary judgment must inform the trial court of the basis for its motion and identify portions of the record demonstrating the lack of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662

N.E.2d 264 (1996). If the moving party satisfies this initial burden, the nonmoving party then has a reciprocal burden to set forth specific facts that show that there is a genuine issue for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164 (1997). If the nonmoving party does not respond in this way, summary judgment, if appropriate, shall be entered against the nonmoving party. *Vahila*, at 429.

FINDS that the Court may not weigh the evidence, assess the credibility of the parties or choose among reasonable inferences when determining whether to grant summary judgment. *Dupler v. Mansfield Journal Co., Inc.*, 64 Ohio St.2d 116, 121, 413 N.E.2d 1187 (1980). The Court must construe the evidence in a light most favorable to the nonmoving party and resolve any doubts in favor of the nonmoving party. *See Morris v. Ohio Casualty Ins. Co.*, 35 Ohio St.3d 45, 47, 517 N.E.2d 904 (1988).

FINDS that Civ. R. 56(C) provides, in pertinent part, that “[s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.” Unauthenticated documents that are not sworn, certified, or authenticated by an affidavit have no evidentiary value, and a trial court may not consider them in ruling on a motion for summary

judgment. *Sparks v. Erie County Board of County Commissioners*, 6th Dist. No. E-97-007, unreported, 1998 WL 15929, *7 (Jan. 16, 1998).

FINDS that the determination of the issues in this case depend upon whether the 1989 or the 2006 amended version of R.C. 5301.56 is applicable to the relevant facts of this case.

FINDS that the former version of R.C. 5301.56, which became effective on March 22, 1989, provided that:

“(A) As used in this section:

(1) ‘Holder’ means the record holder of a mineral interest, and any person who derives his rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) ‘Drilling or mining permit’ means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(B)(1) Any mineral interest held by any 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:

(a) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section 5301.53 of the Revised Code.

(b) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section 5301.53 of the Revised Code.

(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;

(ii) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections 1509.26 to 1509.28 of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(iii) The mineral interest has been used in underground gas storage operations by the holder.

(iv) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section 5301.252 of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(v) A claim to preserve the interest has been filed in accordance with division (C) of this section.

(vi) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in 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.

(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve his interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D)(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(c) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 of the Revised Code.”

FINDS that the amended version of R.C. 5301.56, which became effective on June 30, 2006, contains additional provisions that were not in the former version. R.C. 5301.56 now requires the owner of the surface of the lands subject to the interest to take affirmative action before the mineral interest can be vested in the owner of the surface.

FINDS that the amended version of R.C. 5301.56(E) provides that:

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of

the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

FINDS that under the amended version of R.C. 5301.56(H)(1), a holder or a holder's successors or assignees may protect their mineral interest by filing a claim to preserve the mineral interest or an affidavit within 60 days after the date that the owner of the surface lands served or published the notice required under R.C. 5301.56(E). *See* R.C. 5301.56(H)(1)(a)-(b).

FINDS that R.C. 1.58(A)(1) and (2) provides that "[t]he reenactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section: (1) Affect the prior operation of the statute or any prior action taken thereunder;" or "(2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder. . . ."

FINDS that a change in the law that deals with substantive rights does not affect such rights even though no action or proceeding has been commenced, unless the amending or repealing act expressly

provides that the rights are affected. *O'Mara v. Alberto-Culver Co.*, 6 Ohio Misc. 132, 133, 215 N.E.2d 735 (Ohio Com. Pl. 1966).

FINDS that “[a] ‘vested right’ can ‘be created by common law or statute and is generally understood to be the power to lawfully do certain actions or possess certain things; in essence, it is a property right.’” *State ex rel. Jordan v. Indus. Comm.*, 120 Ohio St.3d 412, 413, 900 N.E.2d 150 (2008), quoting *Washington Cty. Taxpayers Assn. v. Peppel*, 78 Ohio App.3d 146, 155, 604 N.E.2d 181 (1992).

FINDS that an exception or reservation in favor of a third person, who is not a party to a deed, is void. *Kirk v. Conrad*, 3d Dist. No. 1266, 1931 WL 2566, 9 Ohio Law Abs. 717, *2 (Feb. 17, 1931).

FINDS that the words “subject to” are generally interpreted to “mean ‘limited by,’ or ‘subservient or subordinate to’ and connote a limitation on a grantor’s warranty rather than a reservation of rights.” *Stracka v. Peterson*, 377 N.W.2d 580, 582-83 (N.D., 1985).

FINDS that in *Riddell v. Layman*, the Fifth District Court of Appeals found that a title transaction, as required under the former version of R.C. 5301.56, must have occurred within the preceding twenty years from the enactment of the statute, which occurred on March 22, 1989, in order to satisfy the second requirement of the statute which requires a filing or recording of the title transaction. *Riddell v. Layman*, 5th Dist. No. 94 CA 114, 1995 WL 498812, *3.

FINDS that R.C. 5303.01 provides, in relevant part, that: "An action may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest. Such action may be brought also by a person out of possession, having, or claiming to have, an interest in remainder or reversion in real property, against any person who claims to have an interest therein, adverse to him, for the purpose of determining the interests of the parties therein."

FINDS that R.C. 5303.01 further provides that "[t]he clerk of the court shall cause to be recorded in the deed records of each county in which any part of the real property lies, a certified copy of the judgment or decree determining the interests of the parties. The usual fees of the clerk and recorder shall be taxed as part of the costs of the case."

FINDS that the complainant has the burden of proof as to all issues in a quiet title action, and he must prove title in himself if the answer denies his title or the defendant adversely claims title. *Ochsenbine v. Cadiz*, 166 Ohio App.3d 719, 2005-Ohio-6781, 853 N.E.2d 314, ¶13, citing *Duramax, Inc. v. Geauga Cty. Bd. of Commrs.*, 106 Ohio App.3d 795, 798, 667 N.E.2d 420 (1995).

FINDS that a party seeking a permanent injunction must show by clear and convincing evidence that the injunction is necessary to prevent irreparable harm and that he or she does not have an adequate remedy at law. *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267-268, 747 N.E.2d

268 (1st Dist., 2000). A permanent injunction is only issued after a party has demonstrated a right to relief under the applicable substantive law. *Proctor & Gamble Co.*, at 267.

FINDS that slander of title is a tort action that may be brought against a person who has falsely and maliciously defamed the property, either real or personal, of another, and thereby caused him or her special pecuniary damage or loss. *Green v. Lemarr*, 139 Ohio App.3d 414, 430, 744 N.E.2d 212 (2d Dist., 2000), citing *Buehrer v. Provident Mut. Life Ins. Co. of Philadelphia*, 37 Ohio App. 250, 256, 174 N.E. 597, 599 (1930). “To prevail, a claimant must prove ‘(1) there was a publication of a slanderous statement disparaging claimant’s title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages.’” *Green*, at 430-431, citing *Colquhoun v. Webber*, 684 A.2d 405, 409 (Me. 1996). “The malice need not be that of a personal hatred, and an act will be deemed malicious if made in reckless or wanton disregard of the rights of another.” *Consun Food Industries, Inc. v. Fowkes*, 81 Ohio App.3d 63, 72, 610 N.E.2d 463 (9th Dist. 1991), citing *Childers v. Commerce Mtge. Invests.*, 63 Ohio App.3d 389, 579 N.E.2d 219.

FINDS that “[t]o prevail on a claim for unjust enrichment, a plaintiff must establish the following three elements: ‘(1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment.’” *Rogers v. National City Corp.*, 8th Dist. No. 91103, 2009-Ohio-2708, ¶27, quoting *Miller v. Key Bank N.A.*, 8th Dist. No. 86327, 2006-Ohio-1725, ¶43.

FINDS that “[u]nder Ohio law, to establish a claim for tortious interference with a business relationship, a party must show: (1) a business relationship or contract; (2) the wrongdoer’s knowledge of the relationship or contract; (3) the wrongdoer’s intentional and improper action taken to prevent a contract formation, procure a contractual breach, or terminate a business relationship; (4) a lack of privilege; and (5) resulting damages.” *Pasqualetti v. Kia Motors America, Inc.*, 663 F. Supp.2d 586, 602 (N.D. Ohio, 2009), citing *Bowshier v. Chrysler Financial Corp.*, 144 F.Supp.2d 919, 926 (S.D. Ohio, 2001).

FINDS that a constructive trust is an appropriate remedy when it is against the principles of equity that the property be retained by a certain person even though the property was acquired without fraud. *Ferguson v. Owens*, 9 Ohio St.3d 223, 226, 459 N.E.2d 1293 (1984), citing 53 Ohio Jurisprudence 2d (1962) 578-579, Trusts, Section 88; and V Scott on Trusts (3 Ed. 1967) 3412, Section 462.

FINDS that John R. Dickerson and Marjorie I. Dickerson executed a warranty deed on 12/17/1952, which transferred the property that is the subject of this dispute to Pittsburgh Consolidation Coal Company. The warranty deed provided that it was “RESERVING unto the Grantors herein, their heirs and assigns, all of the oil and gas as contained in and underlying the aforescribed premises, together with the right to drill for, operate, produce and market the same, and to do all things necessary or incidental thereto, provided, however, that the drilling, operating, producing and marketing thereof shall be conducted in such a manner that same will not interfere with the mining

operations, strip or otherwise, in any vein or seam of coal underlying said premises hereafter conducted by the Grantee herein, its successors or assigns.” (Plaintiff’s Exhibit B).

FINDS that there is no evidence in the record to suggest that the subject mineral interest was the subject of a title transaction that was filed or recorded in the office of the Harrison County Recorder within the twenty years prior to 3/22/1992.

FINDS, upon review, that there is no evidence in the record to suggest that there was any production of oil and gas on the subject property, on other lands covered by a lease to which the mineral interest was subject, or from lands pooled, unitized, or included in unit operations, under R.C. 1509.26 to 1509.28, in which the subject mineral interest is participating within the twenty years prior to 3/22/1992.

FINDS that there is no evidence in the record to suggest that the subject mineral interest was used in underground gas storage operations by John R. Dickerson, Marjorie I. Dickerson, or by any of their heirs or assigns within the twenty years prior to 3/22/1992.

FINDS that there is no evidence in the record to suggest that a drilling or mining permit was issued to John R. Dickerson, Marjorie I. Dickerson, or to any of their heirs or assigns within the twenty years prior to 3/22/1992.

FINDS that there is no evidence in the record to suggest that a claim to preserve the subject mineral interest was filed in accordance with R.C. 5301.56© by John R. Dickerson, Marjorie I. Dickerson, or by any of their heirs or assigns within twenty years prior to 3/22/1992.

FINDS that there is no evidence in the record that a separately listed tax parcel number was created for the subject mineral interest in Harrison County's tax list or the Harrison County Treasurer's duplicate tax list within twenty years prior to 3/22/1992.

FINDS, therefore, that under the former version of R.C. 5301.56(B)(1) and (2), any mineral interest that John R. Dickerson, Marjorie I. Dickerson, or any of their heirs or assigns, had in the subject property was deemed abandoned and vested in the owner of the surface of the subject property, as of 3/22/1992.

FINDS that Defendant John L. Dickerson filed an Affidavit for Transfer of Real Estate Inherited with the Harrison County Recorder on 2/28/2011 indicating that the Dickerson Defendants had inherited from John R. Dickerson, in the portions set forth in the Affidavit, an "undivided one-half interest in all oil and gas contained in and underlying the hereinafter described premises, together with the right to drill for, operate, produce and market the same, and to do all things necessary or incidental thereto." (Plaintiff's Exhibit F).

FINDS that Defendant John L. Dickerson also filed an Affidavit for Transfer of Real Estate Inherited with the Harrison County Recorder on 2/28/2011 indicating that the Dickerson Defendants had inherited from Marjorie I. Dickerson, in the portions set forth in the Affidavit, an “undivided one-half interest in all oil and gas contained in and underlying the hereinafter described premises, together with the right to drill for, operate, produce and market the same, and to do all things necessary or incidental thereto.” (Plaintiff’s Exhibit G).

FINDS, however, that neither John R. Dickerson or Marjorie I. Dickerson, nor any of their heirs or assigns had any mineral interests in the subject property after 3/22/1992.

FINDS that the Plaintiffs were not required to comply with the provisions contained in the amended version of R.C. 5301.56(E) before their mineral interests in the subject property became vested because the mineral interest became vested in the owner of the surface of the lands on 3/22/1992.

FINDS that the Survivorship Deed transferring the subject real estate from Neil D. Porter, Trustee, to Christopher P. Wendt and Veronica M. Wendt, which was executed on 4/21/2006, provided that the transfer was subject to a “Reservation by John R. Dickerson and Marjorie I. Dickerson, their heirs and assigns for all of the oil and gas with the right to drill for in Warranty Deed filed for record December 17, 1952 in Volume 133, page 69, Deed Records.” (Plaintiff’s Exhibit A).

FINDS that neither the 4/21/2006 nor any previous deed executed after 3/22/1992, which transferred the property at issue "subject to" the Dickersons' mineral interests, created or preserved the Dickersons' mineral interest.

FINDS that there are no genuine issues of material fact remaining regarding Count One of Plaintiffs' Complaint for Declaratory Judgment, and Plaintiffs are entitled to judgment as a matter of law on that count.

FINDS that Plaintiffs are entitled to a judicial declaration as follows:

- (a) The Plaintiffs are the true and rightful owners of all the mineral rights underlying the subject real estate;
- (b) The Dickerson Defendants have no interest in the subject real estate, no oil and gas reservation, and no mineral rights under the subject real estate;
- (c) The Dickerson Defendants did not have any right, title, or interest to any of the minerals under the subject real estate at the time that they entered into the lease agreement with Chesapeake Exploration, LLC; and
- (d) The Affidavits and oil and gas leases received by Chesapeake Exploration, LLC, and memorialized by the memorandum of leases attached to the Plaintiffs' Complaint are null and void, *ab initio*, of no effect, and convey no mineral rights underlying the subject real estate.

FINDS that there are no genuine issues of material fact remaining regarding Count Two of Plaintiffs' Complaint for Quiet Title, and Plaintiffs are entitled to judgment as a matter of law on that count.

FINDS that the mineral rights underlying the subject real estate should be quieted in favor of Plaintiffs because they are the sole owners of the mineral rights underlying the subject real estate.

FINDS that counsel for Plaintiffs should provide the Court with a Journal Entry with the legal description of the subject property herein quieted, which is sufficient for recording in the office of the Harrison County Recorder.

FINDS that there are no genuine issues of material fact remaining regarding Count Three of Plaintiffs' Complaint for Injunction, and Plaintiffs are entitled to judgment as a matter of law on that count.

FINDS that the Dickerson Defendants should be enjoined from interfering, objecting or otherwise preventing Plaintiffs from leasing, conveying, or transferring their rights to the oil and gas underlying the subject real estate, or from taking any action under any existing leases.

FINDS that genuine issues of material fact remain regarding Count Four (Slander of Title), Count Five (Unjust Enrichment - Quantum Meruit), Count Six (Trespass), Count Seven (Negligence /

Negligence *Per Se*), Count Eight (Potential Interference with Business Relationships) and Count Nine (Constructive Trust) of Plaintiffs' Complaint.

FINDS that Plaintiffs' Motion for Summary Judgment does not request summary judgment on the Dickerson Defendants' Counterclaim and the Dickerson Defendants do not request summary judgment on either of the claims contained in their Counterclaim, and therefore, the Court does not address herein whether either party is entitled to judgment as a matter of law on the Dickerson Defendants' Counterclaim.

FINDS that the Dickerson Defendants' are not entitled to any declaratory relief, as requested in their motion for summary judgment, as a matter of law.

FINDS that Plaintiffs' Motion for Summary Judgment should be **Granted, in part**, as it pertains to Count One (**Declaratory Judgment**), Count Two (**Quiet Title**), and Count Three (**Injunction**) of Plaintiffs' Complaint, and **Overruled, in part**, as it pertains to Count Four (**Slander of Title**), Count Five (**Unjust Enrichment - Quantum Meruit**), Count Six (**Trespass**), Count Seven (**Negligence / Negligence Per Se**), Count Eight (**Potential Interference with Business Relationships**) and Count Nine (**Constructive Trust**) of Plaintiffs' Complaint.

FINDS that the Dickerson Defendants' Motion for Summary Judgment Against Plaintiffs should be **Overruled**.

It is therefore

ORDERED that Plaintiffs' Motion for Summary Judgment is **Granted, in part**, as it pertains to Count One (**Declaratory Judgment**), Count Two (**Quiet Title**), and Count Three (**Injunction**) of Plaintiffs' Complaint, and **Overruled, in part**, as it pertains to Count Four (**Slander of Title**), Count Five (**Unjust Enrichment - Quantum Meruit**), Count Six (**Trespass**), Count Seven (**Negligence / Negligence Per Se**), Count Eight (**Potential Interference with Business Relationships**) and Count Nine (**Constructive Trust**) of Plaintiffs' Complaint.

ORDERED that the Dickerson Defendants' Motion for Summary Judgment Against Plaintiffs is **Overruled**.

ORDERED that the Court declares that:

- (a) The Plaintiffs are the true and rightful owners of all the mineral rights underlying the subject real estate;
- (b) The Dickerson Defendants have no interest in the subject real estate, no oil and gas reservation, and no mineral rights under the subject real estate;
- (c) The Dickerson Defendants did not have any right, title, or interest to any of the minerals under the subject real estate at the time that they entered into the lease agreement with Chesapeake Exploration, LLC; and

(d) The Affidavits and oil and gas leases received by Chesapeake Exploration, LLC, and memorialized by the memorandum of leases attached to the Plaintiffs' Complaint are null and void, *ab initio*, of no effect, and convey no mineral rights underlying the subject real estate.

ORDERED that the mineral rights underlying the subject real estate are quieted in favor of Plaintiffs because they are the sole owners of the mineral rights underlying the subject real estate.

ORDERED that counsel for Plaintiffs shall provide the Court with a Journal Entry with the legal description of the subject property herein quieted, which is sufficient for recording in the office of the Harrison County Recorder.

ORDERED that the Dickerson Defendants are enjoined from interfering, objecting or otherwise preventing Plaintiffs from leasing, conveying, or transferring their rights to the oil and gas underlying the subject real estate, or from taking any action under any existing leases.


Edward Emmett O'Farrell, Judge

2/21/2013

Date

cc: Court Administrator's Office
Court Mediator, Andrea L. Fischer-Immke
Attys. David E. Butz, Nathan D. Vaughan, and Matthew W. Onest
Attys. Paul Hervey and Jilliam A. Daisher
Court

