[Cite as *Cattrell Family Woodlands, L.L.C. v. Baruffi*, 2021-Ohio-4660.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

CATTRELL FAMILY WOODLANDS, LLC AND MITCHELL CATTRELL, SUCCESSOR TRUSTEE OF THE KATHERINE F. CATTRELL REVOCABLE TRUST, DATE SEPTEMBER 7, 1995, AS AMENDED,

Plaintiffs-Appellees,

v.

CHERA M. BARUFFI AND LINDA LEE RAGSDALE AND ALISA M. OTTAVIANA AND WILLIAM L. MCKEEL,

Defendants-Appellants.

OPINION AND JUDGMENT ENTRY
Case No. 20 JE 0023

Civil Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 19 CV 130

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Reversed.
Summary Judgment Entered in Favor of Appellants.

Atty. Sean Richard Scullin, Scullin & Cunning LLC, 940 Windham Court, Suite 4, Boardman, Ohio 44512, for Plaintiffs-Appellees Cattrell Family Woodlands, LLC and

Mitchell Cattrell, Successor Trustee of the Katherine F. Cattrell Revocable Trust, dated September 7, 1995, as amended

Atty. Gregory W. Watts, Krugliak Wilkins Griffiths & Dougherty Co., LPA, 4775 Munson Street NW, P.O. Box 36963, Canton Ohio 44735-6963, for Defendant-Appellant Chera M. Baruffi and

Atty. Lawrence T. Piergallini, 131 Third Street, P.O. Box 7, Tiltonsville, Ohio 43963, for Linda Lee Ragsdale, Alisa M Ottaviano nka Alisa M Willson and William L. McKeel.

Dated: December 27, 2021

WAITE, J.

{¶1} In this action involving the Marketable Title Act ("MTA"), Appellants Cattrell Family Woodlands LLC and Mitchell Cattrell, successor trustee of the Katherine F. Cattrell revocable trust, appeal two judgment entries of the Jefferson County Common Pleas Court. In one entry, dated November 18, 2020, the trial court granted summary judgment in favor of Appellees Chera M. Baruffi, Linda Lee Ragsdale, Alisa M. Ottaviano, and William L. McKeel. In a second entry, also dated November 18, 2020, the court quieted title in favor of Appellees. Appellants argue that the trial court erroneously determined the root of title deed included a specific reference to preserve the mineral interests in favor of Appellees under to R.C. 5301.49(A). Pursuant to *Erickson v. Morrison,* -- Ohio St.3d --, 2021-Ohio-746, -- N.E.3d --, and *O'Kelley v. Rothenbuhler*, 2021-Ohio-1167, 171 N.E.3d 775 (7th Dist.), Appellants' argument has merit and the judgment of the trial court is reversed and the trial court's order quieting title is vacated. Summary judgment is entered in favor of Appellants.

Factual and Procedural History

{¶2} At issue, here, are the mineral interests underlying 12.81 acres of property located in Saline Township, Jefferson County. The property is a part of a larger tract of land that has been the subject of several transfers. On June 16, 1921, William Cox deeded the property to Joseph Veres:

> [E]xcepting and reserving therefrom all coal underlying said tracts, and one half of all oil and gas with the right to mine, have and reserve the same and all timber over seven and one-fourth inches in diameter and Interest of the said William Cox a single person, either in Law or Equity, of, in and to the said premises; Together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof[.]

(1/28/20 Motion for Summary Judgment, Exh. 2.)

{¶3} On March 23, 1940, Roland C. and Amy Francy Bushfield conveyed the property to Jefferson S. Bushfield. The deed was recorded on March 29, 1940. This deed constitutes the root of title in this matter. The deed includes language: "Excepting and reserving all the coal underlying said tracts, and one half of all oil and gas with right to mine, bore and remove the same, more or less, but subject to all legal highways." (1/28/20 Motion for Summary Judgment, Exh. 5.)

{¶4} On November 13, 1979, a certificate of transfer was filed after the death of Jefferson S. Bushfield. The certificate of title transferred the property to Heritage Bank, Trustee. The certificate of title did not reference the Cox interest.

{¶5} In September of 1991, Bank One Ohio Trust Company, as successor in interest to Heritage Bank, transferred the property to David J. Adams. Neither the certificate of title nor the accompanying deed referred to the Cox reservation.

{¶6} On August 2, 1999, a certificate of transfer was filed following the death of David James Adams. In accordance, the property was conveyed to David C. Adams and Ruth A. Adams. The certificate of title also did not refer to the Cox reservation.

{¶7} On March 30, 2001, a certificate of transfer was filed after the death of David C. Adams. The certificate of transfer conveyed the property to Ruth A. Adams. Again, the certificate of title did not refer to the Cox reservation.

{¶8} On August 25, 2005, a certificate of transfer was filed concerning the estate of Ruth A. Adams. Within the certificate of transfer, the property was transferred to Beckie A. King and Todd S. Adams.

{¶9} On July 7, 2009, Beckie A. King and Todd S. Adams conveyed the property to Chera M. Baruffi. The deed did not mention the Cox reservation.

{¶10} On April 1, 2019, Appellant Cattrell Family Woodlands, LLC, filed a complaint seeking a declaratory judgment that the Cox interest had been abandoned under the DMA. We note that the complaint involved two separate interests, however, only the Cox interest is at issue, here. Appellees filed an answer. On January 28 and 29, 2020, the parties filed competing motions for summary judgment. On May 18, 2020, the trial court held a hearing. On June 23, 2020, the trial court granted summary judgment in favor of Appellees.

{¶11} On July 16, 2020, the trial court vacated the order after the discovery of an indispensable party. The court allowed Appellant Cattrell Family Woodlands, LLC, to

amend the complaint to add any necessary party. Appellees filed an amended complaint, adding as an additional plaintiff Mitchell Cattrell, successor trustee of the Katherine F. Cattrell revocable trust. Appellees filed an amended answer and counterclaim. It appears that the MTA claim arose during these pleadings for the first time. On November 18, 2020, the court again granted summary judgment in favor of Appellees. On November 30, 2020 and January 2, 2021, the court ordered quiet title in favor of Appellees. It is from these entries that Appellants timely appeal.

General Law

{¶12} The MTA was enacted to extinguish stale interests and claims in land that existed prior to the root of title, with "the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title." *Erickson* at ¶ 16.

{¶13} Marketable record title is defined as an unbroken chain of title to an interest in land for forty years or more. R.C. 5301.48. Marketable record title "shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title." R.C. 5301.50. "Marketable record title therefore 'operates to extinguish' all other prior interests." *Erickson* at ¶ 16, citing R.C. 5301.47(A).

{¶14} However, there are several exceptions, which are referred to as "savings events," that act to prevent those interests from being extinguished. These savings events are described in R.C. 5301.49. R.C. 5301.49(A) is relevant, here, and provides:

> All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided that a general reference in such muniments, or any of them, to easements, use restrictions, or other 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 easement, use restriction, or other interest * * *.

{¶15} R.C. 5301.47(E) defines the "root of title" as "that conveyance or other title transaction in the chain of title of a person * * * which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined."

{¶16} Whether a reference is general or specific has been the subject of much debate over the years. We previously addressed this issue in *Blackstone v. Moore*, 7th Dist. Monroe No. 14 MO 0001, 2017-Ohio-5704, 94 N.E.3d 108, aff'd, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132. In *Blackstone*, we held that a conveyance need not include the volume and page number of the reference in order to be specific.

{¶17} The Ohio Supreme Court affirmed the ruling and created a three-step inquiry: "(1) Is there an interest described within the chain of title? (2) If so, is the reference to that interest a 'general reference'? (3) If the answers to the first two questions are yes, does the general reference contain a specific identification of a recorded title transaction?" *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, ¶ 12. The Court also provided the following definitions of general and specific references:

> Because the term "general reference" is not defined in the act, we look to the ordinary meaning of the term. *Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526, 91 N.E.3d 716, ¶ 26. "General" is defined as "marked by broad overall character without being limited, modified, or checked by narrow precise considerations: concerned with main elements, major matters rather than limited details, or universals rather than particulars: approximate rather than strictly accurate." *Webster's Third New International Dictionary* 944 (2002).
>
> Our caselaw distinguishes between a general reference and a specific reference: if a reference is specific, it is not a general reference. *See Toth* [*v. Berks Title Ins. Co.,*] 6 Ohio St.3d at 341, 453 N.E.2d 639 [1983]. "Specific" is defined as "characterized by precise formulation or accurate restriction (as in stating, describing, defining, reserving): free from such ambiguity as results from careless lack of precision or from omission of pertinent matter." *Webster's Third New International Dictionary* at 2187.

Id. at ¶ 13-14.

ASSIGNMENT OF ERROR

> The trial court erred in finding Defendants, Linda Lee Ragsdale, Alisa M. Ottaviano, and William L. McKeel interest in the Cox Reservation was preserved under Ohio Marketable Title Act by virtue of a specific reference in the Root of Title Deed.

{¶18} Appellants raise three separate arguments within their sole assignment of error. First, they argue that the root of title deed appears to create a new interest, rather than repeat a pre-existing reservation. Because the deed does not mention the name Cox, the date of the original reservation, or the recording information, Appellants argue that the repetition is a general reservation, and is insufficient under *Blackstone.*

{¶19} Appellants filed a motion to supplement their brief after this Court released its Opinion in *O'Kelley.* Appellants argue that in applying *O'Kelley,* it is apparent that the root of deed contains only a general reference to the Cox reservation. First, Appellants argue that the Cox reservation was omitted from the following deeds: Appellants' 2009 deed, a 2005 deed, a 2001 deed, a 2001 certificate of transfer, a 1999 deed, a 1991 deed, and a 1979 deed. Second, the root of title deed added and omitted words from the Cox reservation. Specifically, the reference added the phrase "bore and remove the same, more or less, but subject to all legal highways" and omitted the phrase "all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof."

{¶20} In response, Appellees contend that the instant language is similar to that found in *Erickson,* which the Ohio Supreme Court held was sufficient to constitute a specific reservation. We note that the parties filed competing motions for summary judgment to the trial court, thus admitting that there are no material questions of fact left to be determined and that the matter is to be resolved solely as a matter of law.

{¶21} For ease of understanding, all relevant aspects of the deeds are repeated, here. The original Cox reservation stated:

> [E]xcepting and reserving therefrom all coal underlying said tracts, and one half of all oil and gas with the right to mine, have and reserve the same and

> all timber over seven and one-fourth inches in diameter and Interest of the said William Cox a single person, either in Law or Equity, of, in and to the said premises; Together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereof[.]

(1/28/20 Motion for Summary Judgment, Exh. 2.)

{¶22} The 1940 root of title deed stated: "Excepting and reserving all the coal underlying said tracts, and one half of all oil and gas with right to mine, bore and remove the same, more or less, but subject to all legal highways. (1/28/20 Motion for Summary Judgment, Exh. 5.)

{¶23} In *Erickson,* the original reservation stated: "Excepting and reserving therefrom all coal, gas and oil with the right of said first parties, their heirs and assigns, at any time to drill and operate for oil and gas and mine all coal." *Id.* at ¶ 5. Each subsequent transfer in the chain of title, including the root of title deed, included the reservation word for word, with the exception of four deeds that omitted the word "said" before "first parties." *Id.* at ¶ 6. After the commencement of a MTA complaint, the trial court granted a motion on the pleadings in favor of the surface owners, the appellees in that case. On appeal, the Fifth District reversed the trial court and held that the chain of title did not include a specific reference to the original reservation.

{¶24} The Ohio Supreme Court reversed the Fifth District, holding that the root of title deed specifically referenced the original reservation. *Id.* at ¶ 32. Specifically, the court held that "the transfer of the surface rights does not contain vague, boilerplate language excepting any reservations that may—or may not—exist. Rather, the Morrisons' 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." *Id.* at ¶ 32. The Court reiterated the definition of "boilerplate language" as described within *Blackstone*: "common conveyancing practice for draftsmen to include in the deed description some such language as 'subject to easements and use restrictions of record.' " *Id.* at ¶ 30, citing Smith, *The New Marketable Title Act*, 22 Ohio St.L.J. 712, 717 (1961). In essence, boilerplate language "leaves it unclear whether a prior interest in fact exists." *Id.* at ¶ 30.

{¶25} After *Erickson*, we released our Opinion in *O'Kelley*. In *O'Kelley,* the severance deed reserved:

> All oil, gas and minerals (including coal) of whatsoever kinds with full right to develop same and to operate on said premises therefore with the incidental rights and privileges necessary to such development and operation including among other things the right to locate and drill thereon and therein oil wells and gas wells to lay pipes to and from said wells * * *

Id. at ¶ 8.

{¶26} The root of title deed provided the following reference:

> Being the south east quarter of Section Nineteen (19), Township four (4) and of Range four (4) containing 160 acres more or less. Except 20 acres thereof conveyed by Mary B. [sic] Zonker to Joseph C. Rothenbuhler and also excepting the oil and gas minerals including coal underlying the same heretofore conveyed.

Id. at ¶ 15.

{¶27} On appeal, we held that the root of title's repetition of the original reservation did not amount to a specific reference for purposes of R.C. 5301.49(A). We explained that the root of title deed omitted language from the original reservation that described the parties' rights as to the mineral interest. *Id.* at ¶ 46. Second, we noted that the parties disputed whether language in the root of title deed stating "heretofore conveyed" modified the phrases "the oil and gas minerals including coal" or "the same." However, we held that such dispute need not be resolved, as the very fact the reference was subject to multiple interpretations amounted to further evidence that the reference was general and not specific. Third, we held that the "reference sounds to the reader like vague, boilerplate language excepting reservations that may or may not exist, rather than a specific, identifiable reservation of mineral rights using the same language that created it." *Id.* at ¶ 48.

{¶28} We acknowledge that *Erickson* and *O'Kelley* were released after the trial court entered its decision in this matter. Thus, the court did not have the benefit of the above analysis. To date, *Erickson* and *O'Kelley* are the sole Ohio cases to address this specific issue. While two other Ohio Appellate Courts have cited to *Erickson,* neither addressed the instant issue. Ultimately, the question of whether a reference is general or specific can only be answered by means of a fact driven analysis.

{¶29} One factor to consider is whether "the transfer of the surface rights [* * *] contain vague, boilerplate language excepting any reservations that may-or may not-exist." *Erickson* at ¶ 32. Again, the crux of this factor is whether the reservation leaves it unclear whether a prior interest, in fact, exists. The *Erickson* Court found the following

reference was specific, and not mere boilerplate language: "EXCEPTING AND RESERVING THEREFROM all coal, gas and oil with the right of first parties, their heirs and assigns, at any time to drill and operate for oil and gas and mine all coal." *Id.* at ¶ 7. In contrast, the *O'Kelley* court determined the following reference constituted general, boilerplate language: "also excepting the oil and gas minerals including coal underlying the same heretofore conveyed." *Id.* at ¶ 15, 45.

{¶30} Again, the instant reference stated: "Excepting and reserving all the coal underlying said tracts, and one half of all oil and gas with right to mine, bore and remove the same, more or less, but subject to all legal highways." (1/28/20 Motion for Summary Judgment, Exh. 5.) This language is more akin to the language in *O'Kelley*, as there is nothing within the reference alerting the reader to the existence of a prior reservation. Instead, on its face, the language appears to create a new reservation.

{¶31} We must also consider whether the root of title contained the same language as the original reservation. The *Erickson* Court did not find it significant that the word "first" before the word "parties" was omitted from four of five deeds within the chain of title where the remaining language was a verbatim recitation of the original reservation. In contrast, the *O'Kelley* court found omitted language describing the parties' rights as to the mineral interest was an important consideration.

{¶32} Here, although the trial court stated that the root of title included a word-for-word recitation of the Cox interest, this assertion is incorrect. The root of title deed added the language "bore and remove the same, more or less." The root of title deed also omitted language stating "all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof." This language is relevant to the parties'

rights, as it relates to the "rents, issues and profits." The reference also omitted a line stating: "with the right to mine, have and reserve the same and all timber over seven and one-fourth inches in diameter and Interest of the said William Cox a single person either in Law or Equity, of, in and to the said premises." While a name is not required in order for a reference to be specific, Cox's name was present in the original reservation but was specifically omitted from the root of title deed.

{¶33} Importantly, the *Erickson* Court also relied on the fact that the reservation was included within each deed in the chain of title. In the instant case, the reference was omitted in at least seven deeds, including Appellees' deed. As noted by the parties, the following documents within the chain of title do not refer to the reservation: Appellant's 2009 deed, a 2005 deed, a 2001 deed, a 2001 certificate of transfer, a 1999 deed, a 1991 deed, and a 1979 deed. It appears that the original reservation has not been cited in any other deed within the chain of title other than the root of title.

{¶34} Based on the factors analyzed in *Erickson* and *O'Kelley*, the root of title deed in this matter does not contain a specific reference to the original reservation for purposes of R.C. 5301.49(A). Instead, the reference contains vague, boilerplate language that omits and adds phrases to the original reservation and has not been consistently noted within the chain of title. As such, we must answer the second *Blackstone* inquiry in the affirmative. Thus, we must move to the third inquiry, which asks whether the reference contains a specific identification of a recorded title transaction. As discussed by the trial court, it does not. Accordingly, Appellants' sole assignment of error has merit and is sustained.

Conclusion

{¶35} Appellants argue that the trial court erroneously determined the reference to the original reservation in a root of title deed was specific for purposes of R.C. 5301.47(A). Pursuant to *Erickson* and *O'Kelley,* Appellants' argument has merit. The disputed reference is not specific, as a matter of law. The judgment of the trial court is reversed and the trial court's order quieting title is vacated. Summary judgment is entered in favor of Appellants.

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellants' assignment of error is sustained. It is the final judgment and order of this Court that the judgment granting summary judgment to Appellees of the Court of Common Pleas of Jefferson County, Ohio, is reversed and the trial court's order quieting title is vacated. Summary judgment is entered in favor of Appellants. Costs to be taxed against the Appellees.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.