

[Cite as *Blackstone v. Moore*, 2017-Ohio-7751.]

STATE OF OHIO, MONROE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DAVID M. BLACKSTONE, et al.)	CASE NO. 14 MO 0001
)	
PLAINTIFFS-APPELLEES)	
)	
VS.)	OPINION AND
)	JUDGMENT ENTRY
SUSAN E. MOORE, et al.)	
)	
DEFENDANTS-APPELLANTS)	

CHARACTER OF PROCEEDINGS: Appellees' Motion to Certify a Conflict.

JUDGMENT: Motion Granted.

APPEARANCES:

For David & Nicolyn Blackstone:

Atty. Daniel P. Corcoran
Atty. Kristopher O. Justice
Theisen Brock, L.P.A.
424 Second Street
Marietta, Ohio 45750

For Susan Moore, Carolyn Kohler,
Rebecca Englehart and Charles Yontz:

Atty. Mark W. Stubbins
Stubbins, Watson & Bryan Co., LPA
59 North Fourth Street
P.O. Box 0488
Zanesville, Ohio 43702-0488

For J.K. Larrick and Ila Carpenter:

Atty. Stephanie Mitchell
Tribbie, Scott, Plummer & Padden
139 West Eighth Street
P.O. Box 640
Cambridge, Ohio 43725

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: September 18, 2017

[Cite as *Blackstone v. Moore*, 2017-Ohio-7751.]
PER CURIAM.

{¶1} On June 29, 2017, we released our Opinion in *Blackstone v. Moore*, 7th Dist. No. 14 MO 0001, 2017-Ohio-5704, -- N.E.3d --. On July 10, 2017, Appellees David M. and Nicolyn Blackstone (“the Blackstones”) filed a motion to certify a conflict to the Ohio Supreme Court, pursuant to App.R. 25(A). As our Opinion conflicts with the decision in *Duvall v. Hibbs*, 5th Dist. No. CA-709, 1983 WL 6483 (June 8, 1983), we grant Appellees’ motion and certify a conflict to the Ohio Supreme Court.

{¶2} Motions to certify a conflict are governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination.

{¶3} Under Ohio law, “there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper.” *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 613 N.E.2d 1032, (1993), paragraph one of the syllabus. We have adopted the following requirements from the Supreme Court:

[A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its

judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be “upon the same question.” Second, the alleged conflict must be on a rule of law—not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.)

Id. at 596.

{¶4} Appellees allege that our Opinion in their case conflicts with *Duvall, supra*. In *Duvall*, the Fifth District was presented with the issue of whether a reference to a reservation of rights in a deed was specific or general pursuant to R.C. 5301.49(A), the same issue before us in the instant case. The *Duvall* Court created a bright-line rule that looks to whether the reserving deed can be located without checking the indexes. *Id.* at *2. In addition to *Duvall*, we reviewed two other cases addressing the same issue, *Patton v. Poston*, 4th Dist. No. 1141, 1983 WL 3171 (Apr. 25, 1983) and *Pinkney v. Southwick Investments, L.L.C.*, 8th Dist. Nos. 85074, 85075, 2005-Ohio-4167. In *Patton* and *Pinkney*, the respective courts used four factors to determine whether such reference was specific or general.

{¶5} We chose to follow the logic of *Patton* and *Pinkney* and declined to follow the stricter bright-line rule of *Duvall*. In rejecting *Duvall*, we noted that it relied on an earlier case from our District, *Landefeld v. Keyes*, 7th Dist. No. 548, 1982 WL 6146 (June 17, 1982). The *Duvall* Court determined that the reference to a

reservation of rights at issue was “a little more definite than that in Landefeld, but not as specific as that which the court in Landefeld found would have been sufficient to satisfy the statute.” *Id.* at *2. However, in *Landefeld* we did not reach the issue of whether a reference complied with R.C. 5301.49(A). *Landefeld* confined itself to a much narrower determination:

Defendants contend that the specific reference to the recorded title transaction, which created the oil and gas interest in the 83 acre parcel of land, in P.X. 2 and P.X. 3, complies with the above cited provision of R.C. 5301.49 for subject parcel of real estate. We agree with the decision of the trial court that inasmuch as such specific reference concerned a different tract of land than subject parcel of land, it does not affect the claim of title for subject parcel of real estate pursuant to R.C. 5301.49.

Id. at *2.

{¶16} Nonetheless, the *Duvall* Court utilized *Landefeld* to decide that R.C. 5301.49(A) “requires sufficient reference so that a title examiner may locate the prior conveyance by going directly to the identified conveyance record in the recorder’s office without checking conveyance indexes.” *Duvall* at *2. We noted that the Fifth District is the only district that follows this strict rule, and that this rule holds drafters to a much higher standard than does the plain language of the statute.

{¶17} Because *Duvall* required more than is required by R.C. 5301.49(A), we instead elected to follow *Patton* and *Pinkney*, and looked to four factors in

determining whether a reference to reservation of rights is specific or general. These factors examine whether the reference included: (1) the type of mineral right created, (2) the nature of the encumbrance (an estate, profit, lease, or easement), (3) the original owner of the interest, and (4) whether it referenced the instrument creating the interest. We held that these factors were statutorily sufficient to put parties on notice of a reservation of rights.

{¶8} As we chose to follow the *Patton* and *Pinkney* holdings and rejected the *Duvall* holding, the Blackstones correctly assert that our decision conflicts with the holding of *Duvall*. Accordingly, the Blackstones' motion to certify a conflict is granted.

Waite, J., concurs.

Donofrio, J., concurs.

Robb, P.J., concurs.