

ORIGINAL

IN THE SUPREME COURT OF OHIO

JAMES E. SARCHET, JR. ET AL,
APPELLEES,
v.

THOMAS A. SARCHET, ET AL,
APPELLANTSS

17-0988

On Appeal from the Guernsey
County Court of Appeals,
Fifth Appellate District

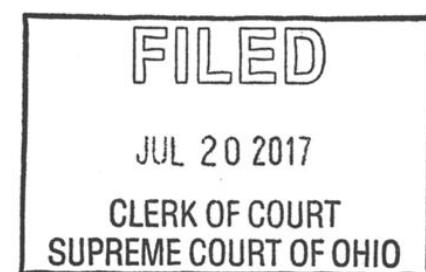
Court of Appeals
Case No. 16-CA-29

NOTICE OF APPEAL
OF APPELLANTS, THOMAS A. SARCHET AND CAROLYN SARCHET

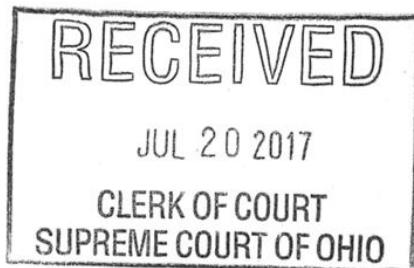
STEPHANIE L. MITCHELL (0073628)
TRIBBIE, PLUMMER, CHURCH & LAPLANTE
P. O. BOX 640
CAMBRIDGE, OHIO 43725-0640
TELEPHONE: (740) 432-6322
FACSIMILE: (740) 439-1795
EMAIL: stephanie.church@tspplaw.org

ATTORNEY FOR APPELLANTS,
THOMAS A. SARCHET AND CAROLYN SARCHET

STEPHEN C. HEINE (0016499)
111 NORTH 7TH STREET
CAMBRIDGE, OHIO 43725
TELEPHONE: (740) 432-4227
FACSIMILE: (740) 439-7712
EMAIL: [scheine@midohio.twcbc.com](mailto:sheine@midohio.twcbc.com)



ATTORNEY FOR APPELLEES,
JAMES E. SARCHET, JR. AND KELLY J. SARCHET



TRIBBIE, PLUMMER
CHURCH & LAPLANTE, LLC
ATTORNEYS AT LAW
139 WEST EIGHTH STREET
P.O. BOX 640
CAMBRIDGE, OHIO

NOTICE OF APPEAL

Now comes the Appellants, Thomas and Carolyn Sarchet, by and through counsel, Attorney Stephanie L. Church, and hereby gives notice to this Court of their appeal of the decision of the Fifth District Court of Appeals dated June 7, 2017.

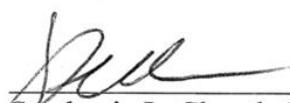
Respectfully submitted,



STEPHANIE L. CHURCH (0073628)
TRIBBIE, PLUMMER, CHURCH & LAPLANTE
139 WEST EIGHTH STREET
P. O. BOX 640
CAMBRIDGE, OHIO 43725-0640
TELEPHONE: (740) 432-6322
FACSIMILE: (740) 439-1795
EMAIL: stephanie.church@tspplaw.org
ATTORNEY FOR APPELLANTS, THOMAS AND
CAROLYN SARCHET

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a true copy of the foregoing Memorandum in Support of Jurisdiction upon counsel for Plaintiffs/Appellees, Attorney Stephen C. Heine, Heine & Ferguson, 111 N. 7th Street, Cambridge, Ohio 43725, by hand delivery this 19 day of July 2017.



Stephanie L. Church (0073628)
Tribbie, Plummer, Church & LaPlante
Attorney for Appellants,
Thomas and Carolyn Sarchet

TRIBBIE, PLUMMER
CHURCH & LAPLANTE, LLC
ATTORNEYS AT LAW
139 WEST EIGHTH STREET
P.O. BOX 640
CAMBRIDGE, OHIO

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
COURT OF APPEALS

JUN - 7 2017

GUERNSEY COUNTY, OHIO
TERESA A. DANKOVIC, CLERK OF COURTS

JUDGMENT ENTRY

JAMES E. SARCHET, JR., et al.

Plaintiffs-Appellees

-vs-

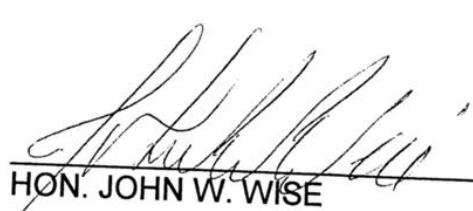
THOMAS A. SARCHET, et al.

Defendants-Appellants

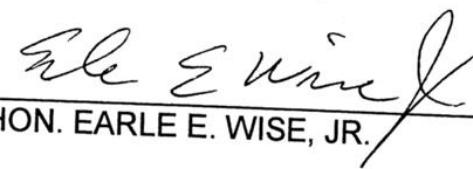
Case No. 16 CA 29

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Guernsey County, Ohio, is affirmed.

Costs are assessed to Appellants.


HON. JOHN W. WISE


HON. W. SCOTT GWIN


HON. EARLE E. WISE, JR.

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
JUN - 7 2017
TERESA A. DANKOVIC, CLERK OF COURTS
GUERNSEY COUNTY, OHIO

JAMES E. SARCHET, JR., et al.

Plaintiffs-Appellees

-vs-

THOMAS A. SARCHET, et al.

Defendants-Appellants

JUDGES:

Hon. W. Scott Gwin, P. J.
Hon. John W. Wise, J.
Hon. Earle E. Wise, Jr., J.

Case No. 16 CA 29

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 15 CV 346

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellees

STEPHEN C. HEINE
111 North 7th Street
Cambridge, Ohio 43725

For Defendant-Appellants

STEPHANIE L. CHURCH
TRIBBIE, PLUMMER, CHURCH
& LAPLANTE
139 West 8th Street, P.O. Box 640
Cambridge, Ohio 43725

Wise, John, J.

{¶1} Defendants-Appellants Thomas A. Sarchet and Carolyn Sarchet appeal the decision of the Guernsey County Court of Common Pleas which granted summary judgment in favor of Plaintiffs-Appellees James E. Sarchet, Jr. and Kelly J. Sarchet.

STATEMENT OF THE FACTS AND CASE

{¶2} The relevant facts are as follows:

{¶3} Harold E. Sarchet had two sons: James E. Sarchet and Thomas A. Sarchet, the Appellant herein.

{¶4} James E. Sarchet, Jr. is the son of James E. Sarchet and Louise A. Sarchet.

{¶5} On March 29, 1983, Harold E. Sarchet transferred 96 acres in Guernsey County, Ohio, to his son James E. Sarchet and his then wife, Louise A Sarchet. Said deed was recorded in Guernsey County Deed Volume 353, Page 458. The deed contained two (2) reservations:

{¶6} "The Grantor does further except and reserve all of the minerals and mineral rights in and underlying the above described premises."

{¶7} "The Grantor does hereby except and reserve a life estate in and to the real estate above described for and during his natural lifetime."

{¶8} Subsequently, by Warranty Deed dated August 21, 2001, Harold E. Sarchet conveyed to his other son, Thomas A. Sarchet, (TRACT FOUR) all minerals and mineral rights under the following described tract as conveyed by deed recorded in Volume 353, Page 458, Deed Records of Guernsey County, Ohio.

{¶9} On September 3, 2009, Appellant Thomas Sarchet and his father, Harold E. Sarchet, entered into a Timber Sale Contract which is recorded at Guernsey County Official Records Volume 466, Page 382.

{¶10} On August 12, 2014, the life tenant, Harold E. Sarchet, died and the life estate terminated as a matter of law.

{¶11} Subsequently, on October 10, 2014, Appellee James Sarchet, Jr.'s parents, James E. Sarchet and former spouse, Louise A. Sarchet, transferred and conveyed the ninety-six (96) acres to him and his wife Kelly J. Sarchet, as recorded in Guernsey County Official Records Volume 521, Page 503. The deed contained the same mineral reservation. The Timber Sale Contract, Appendix C, has a term as an executory contract until July 4, 2059, almost fifty (50) years from the date of execution.

{¶12} Through counsel, Appellee James Sarchet made a written demand for release of the Timber Sale Contract upon Appellant Thomas Sarchet and his wife, who has a dower interest. Appellant declined to release the encumbrance.

{¶13} On August 21, 2015, Appellee filed a Complaint for Declaratory Relief and Quiet Title in the Guernsey County Court of Common Pleas.

{¶14} On August 30, 2016, Appellee filed a Motion for Summary Judgment with the trial court.

{¶15} On September 30, 2016, Appellant filed a response to the motion for summary judgment.

{¶16} By Entry dated October 26, 2016, and journalized by Judgment Entry dated November 10, 2016, the trial court granted Appellee's Motion for Summary Judgment and found the Timber Sale Contract to be void.

{¶17} Appellants now appeal, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶18} "I. THE TRIAL COURT ERRED BY GRANTING PLAINTIFF'S [SIC] MOTION FOR SUMMARY JUDGMENT AS A GENUINE ISSUE OF MATERIAL FACT REMAINED."

"Summary Judgment Standard"

{¶19} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36. Civ.R. 56(C) provides, in pertinent part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, 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. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor.

{¶20} Pursuant to the above rule, a trial court may not enter a summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment

bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 1997-Ohio-259, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

{¶21} It is based upon this standard that we review Appellant's assignments of error.

I.

{¶22} In their sole Assignment of Error, Appellants argue that the trial court erred in granting Appellees' motion for summary judgment. We disagree.

{¶23} As set forth above, in their motion for summary judgment, Appellees argued that Harold Sarchet did not have the right to enter in to the Timber Contract pursuant to his rights as a life estate tenant, and Thomas Sarchet's mineral rights did not include the right to timber on the land.

{¶24} Appellant herein argues that a genuine issue of material fact remains with regard to whether trees are "minerals" as included in the reservation in this case.

{¶25} The trial court, in its judgment entry granting summary judgment in favor of Appellees, stated:

The Court concludes that Ohio law as it relates to the rights of a life tenant relating to timber is separate and distinct from mineral rights reservation. The Court concludes as a matter of law, based on the undisputed facts before it in this case, that Harold E. Sarchet (who had reserved a life estate by warranty deed) would have had the rights to reasonable estovers as to the timber on the land "that is, wood from off the land for fuel, fences, agricultural erections, and other necessary improvements and he may have cut off timber for purposes required in the reasonable cultivation of the premises." *Am. Jr. 2d, Life Tenants and Remaindermen* §157. A life tenant may sell fallen or decaying *timber* but may not materially lessen the value of the property. See 41 *Ohio Jurisprudence 3d* §64 *Estovers; timber* and §65 *Mineral Rights*.

The Court further concludes that the Defendants cite no authority of law for the proposition that the timber contract is merely [sic] extension of the mineral rights that Harold E. Sarchet had already conveyed to the Defendant Thomas A. Sarchet. The Court concludes that the reservation of the life estate in the mineral rights are separate and distinct in the deeds and Ohio law has separate and distinct rights as it relates to timber rather than minerals which are most often in the law equated with oil and gas and coal and other minerals which are found underneath the surface of the land.

{¶26} Upon review, we find no error in the trial court's entry of summary judgment against Appellants. As set forth above, the trial court properly applied Ohio law as it applies to the timber rights of a life tenant wherein it found that during his lifetime, Harold

Sarchet only had the right to "reasonable estovers" and that he did not have the right to "materially lessen the value of the property" by entering into the timber lease in this matter.

{¶27} We also agree with the trial court's holding that the right to timber is not included in the mineral rights reservation as they are separate and distinct rights. We find no case law to support Appellants argument for the inclusion of timber within the definition of mineral rights. Rather, we find that mineral rights include only those types of resources, such as oil and gas, rocks, ores and metals, or other raw materials found beneath the surface of the land.

{¶28} Black's Law Dictionary defines "mineral" as follows:

mineral *n.* (15c)

1. Any natural inorganic matter that has a definite chemical composition and specific physical properties that give it value <most minerals are crystalline solids>. 2. A subsurface material that is explored for, mined, and exploited for its useful properties and commercial value. 3. Any natural material that is defined as a mineral by statute or case law.

Black's Law Dictionary (10th ed. 2014)

{¶29} Merriam-Webster Dictionary contains the following definitions for inorganic and trees:

inorganic

1a (1): being or composed of matter other than plant or animal

tree

1a: a woody perennial plant having a single usually elongate main stem generally with few or no branches on its lower part. Merriam-Webster, n.d. Web. 2 June 2017.

{¶30} As trees are plants, and plants are by definition inorganic, trees cannot be included in the definition of minerals because minerals are composed of inorganic matter.

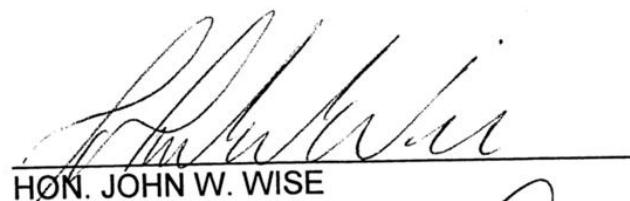
{¶31} Appellant's sole Assignment of Error is overruled.

{¶32} Accordingly the judgment of the Court of Common Pleas of Guernsey County, Ohio, is affirmed.

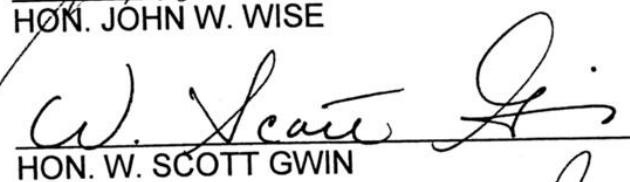
By: Wise, John, J.

Gwin, P. J., and

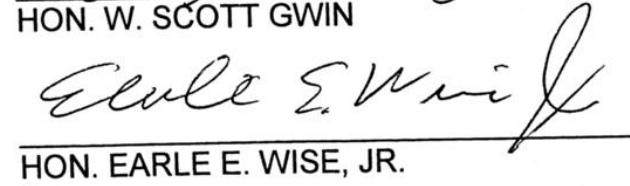
Wise, Earle, J., concur.



HON. JOHN W. WISE



HON. W. SCOTT GWIN



HON. EARLE E. WISE, JR.

JWW/d 0601