IN THE SUPREME COURT OF OHIO

KERRY R. HARTLINE, *et al.*, **Plaintiffs-Appellants,** **v.** **ELLA J. ATKINSON, *et al.*,** **Defendants-Appellees.**	**On Appeal from Monroe County Court of Appeals Seventh Appellate District** **Court of Appeals Case No.: 20 MO 0006**

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS, KERRY R. HARTLINE AND MARY E. HARTLINE

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Table of Contents

I. THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case involves the Dormant Mineral Act, R.C. 5301.56 ("DMA") and the Marketable Title Act, R.C. 5301.47, *et seq*. ("MTA"), which are two statutes that affect title to mineral rights for many landowners in this state, especially in eastern and southeastern Ohio.

As this Court held in *West v. Bode*, Slip Opinion No. 2020-Ohio-5473, ¶2, the DMA and MTA are "independent, alternative statutory mechanisms that may be used to reunite severed mineral interests with the surface property subject to those interests." In this action, the Hartlines asserted claims arising under both statutes. Thus, this appeal presents propositions of law relating to both statutes.

The Hartlines' Proposition of Law No. 1 addresses whether an interest can "arise" out of a decedent's Will or Estate under R.C. 5301.49(D) if the decedent does not have record title to such interest. There are many other instances (beyond the facts in this case) in which Wills or Estates are filed for the descendants of record interest holders, and these Wills and Estates are often filed after a gap in the chain of record title for the interest in land has arisen. An examination of record title involves a search for each owner named in the title transactions recorded within the chain of title. Gaps in the record chain of title prevent a title examiner from continuing to follow the chain to the next record owner. Even if the title examiner is able to determine where the chain later continues, a gap in the chain of record title makes it unclear whether subsequent Wills or Estates filed by the record holder's descendants had any effect on title to the interest being searched, especially when the Wills or Estates do not identify the relevant interest or describe the land affect by the interest. Because gaps in the chain of title for interests in land arise frequently (especially when the current interest holders are unaware that

their interests even exist), the extent to which such interests can be preserved by subsequent Wills or Estates under R.C. 5301.49(D) is a matter of public or great general interest.

The Hartlines' Proposition of Law No. 2 is inverse to Proposition of Law No. III that was accepted by this Court in *Peppertree Farms, LLC v. Thonen*, Case No. 2020-0814. There are many other instances (beyond the facts in this case) in which Wills or Estates are filed for the descendants of a record interest holder, and these Wills and Estates do not identify certain interests belonging to the decedent or describe the land affected by such interests. Because such Wills and Estates are filed frequently, the extent to which any unidentified interests held by the decedent are preserved under R.C. 5301.49(D) is a matter of public or great general interest. Indeed, this matter is of no less interest to the public than the *Peppertree Farms* case was when this Court accepted it for review on November 24, 2020.

The Hartlines' Proposition of Law No. 3 is inverse to the ALTERNATIVE Proposition of Law No. 2 that was accepted by this Court in *Richmond Mills, Inc. v. Ferraro*, Case No. 2020-0433, except that it applies to the exception to marketable record title under R.C. 5301.49(D) instead of R.C. 5301.49(B). Should a title transaction of an interest by one co-tenant under R.C. 5301.49(D) operate as a title transaction for all other co-tenants in that same interest? This matter is of no less interest to the public than the *Richmond Mills* case was when this Court accepted it for review on July 7, 2020.

The Hartlines' Proposition of Law No. 4 is a direct quote from this Court's recent ruling in *West v. Bode*, Slip Opinion No. 2019-Ohio-1494, ¶2. The DMA and the MTA are independent, alternative statutory mechanism that may be used to reunite severed mineral interests with the surface property subject to those interests. Unfortunately, (as discussed below) the Seventh District's decision in this case indicates that the court does not understand the

implications of *West*. This proposition of law presents a matter of public or great general interest because the Seventh District's misguided analysis will create significant confusion among lower courts attempting to understand the interplay between these two statutes.

The Hartlines' Proposition of Law No. 5 addresses the requirements for pleading a quiet title claim involving the Duhig Rule.[1] On May 26, 2020, this Court accepted a cross-appeal regarding the operation of the Duhig Rule in *Senterra Ltd. v. Winland*, Case No. 2020-197. Since these types of claims are increasingly being asserted, the pleading requirements for such claims are a matter of public or great general interest.

The Hartlines' Propositions of Law Nos. 6 and 7 are the same propositions of law that are presented in *Fonzi v. Brown*, Case No. 2020-0773, and *Fonzi v. Miller*, Case No. 2020-0861. This matter is of no less interest to the public than the *Fonzi* cases were when this Court accepted them for review on September 1, 2020 and on September 29, 2020. The Hartlines incorporate by reference their arguments about why this matter if one of public or great general interest, as set forth in their Memorandum in Support of Jurisdiction in Case No. 2021-0054.

The Hartlines' Proposition of Law No. 8 is the same proposition of law that was presented in *Hartline v. Atkinson*, Case No. 2021-0054. Since including a R.C. 5301.56(E)(1) notice with a complaint in a quiet title action is the most practical and efficient means of establishing the 20-year period under R.C. 5301.56(B)'s conclusive presumption, and since this notice can comply with all the requirements in R.C. 5301.56(F) and be served on the mineral

[1] The Duhig Rule is applied to deeds containing an over conveyance of minerals. "[I]f a grantor does not own a large enough mineral interest to satisfy both the grant and the reservation, the grant must be satisfied first because the obligation incurred by the grant is superior to the reservation." *See Northern Oil & Gas, Inc. v. EOG Res., Inc.*, Case No. 1:16-cv-388, 2019 U.S. Dist. LEXIS 232508, fn. 1 (D. N. D. January 15, 2019)(citing *Johnson v. Finkle*, 836 N.W.2d 444 (N.D. 2013)).

holders by certified mail under the Civil Rules, this practice should be permitted going forward. The Hartlines incorporate by reference their arguments about why this matter is one of public or great general interest, as set forth in their Memorandum in Support of Jurisdiction in Case No. 2021-0054.

II. STATEMENT OF CASE AND FACTS

The Hartlines acquired 85.225 acres of land (the "Premises") located in Adams Township, Monroe County, Ohio, pursuant to a warranty deed dated December 7, 2004 and recorded at Volume 126, Page 39, Official Records of Monroe County, Ohio.

In a warranty deed ("1918 Deed") dated September 14, 1918 and recorded at Volume 88, Page 8, Deed Records of Monroe County, Ohio, C.C. Webb, a.k.a. Charles C. Webb conveyed a portion of the Premises to Isaac Ady. The 1918 Deed was made subject to a reservation and exception ("Webb Exception") for "the full three fourths (3/4) of all the oil and gas lying into and under the above described tracts of land" (the "Webb Interest").

The Last Will and Testament of Charles C. Webb was filed in the Monroe County Probate Court in 1931. Although the Will did not identify the Webb Interest or describe the Premises, it devised all of his property to his wife, Belle C. Webb, and then, after her death, whatever was left was to be divided between his son, William C. Webb, and his daughter, Marjorie L. Webb.[2] For more than 60 years, there were no filed or recorded title transactions for anyone in the Webb family. Then, on February 4, 1992, the Last Will and Testament of William C. Webb was filed in the Monroe County Probate Court. Although the Will did not identify the Webb Interest or describe the Premises, it devised all of his property to his daughter, Billie Jean

[2] The Will specified that nothing shall conflict with Belle C. Webb selling any property, either real, personal, or mixed, and that "any real estate that she wishes to sell and her signing a deed therefor, shall be a deed in fee simple."

Ady. Then, on November 2, 1995, the Last Will and Testament of Billie Jean Ady was filed in the Monroe County Probate Court. Although the Will did not identify the Webb Interest or describe the Premises, it devised all of her property to James William Ady. Finally, in 2016, 2018, and 2019, additional documents were recorded showing that Belle C. Webb had died intestate in 1958. These documents were filed more than 55 years after 1958 in order to close the gap in the record chain of title between Belle C. Webb, who would have inherited the Webb Interest upon the death of C.C. Webb in 1931, and her children, William C. Webb and Marjorie L. Webb, who would have inherited the Webb Interest upon the death of Belle C. Webb in 1958.

The Hartlines filed the complaint in this action on March 6, 2017. The Hartlines alleged that the Webb Interest had expired because the Webb Exception lacked any words of inheritance (Second Claim), that the Webb Interest had been extinguished by the operation of the MTA (Fifth Claim), that the Webb Interest had been abandoned under R.C. 5301.56(B) and/or R.C. 5301.56(H)(2) of the DMA (Seventh Claim), and that title to the Webb Interest should be quieted in favor of the Hartlines and against Webb Defendants under R.C. 5303.01 (Tenth Claim). The Webb Defendants filed an answer on April 25, 2017. After the joinder of additional parties, the Webb Defendants filed an additional answer on March 20, 2018.

On November 27, 2019, Webb Defendants and the Hartlines filed motions for summary judgment. On January 2, 2020, the Webb Defendants filed a response in opposition to the Hartlines' motion for summary judgment. On January 6, 2020, the Hartlines filed a memorandum in opposition to the Webb Defendants' motion for summary judgment. On January 15, 2020, the Webb Defendants filed a reply in support of their motion for summary judgment. On January 17, 2020, the Hartlines filed a reply in support of their motion for summary judgment.

On February 19, 2020, the trial court issued a judgment entry granting summary judgment in favor of the Webb Defendants and against the Hartlines. The trial court found that the Webb Interest had been preserved by a timely filed claim to preserve under R.C. 5301.56(H)(1) of the DMA and that Webb Interest had been preserved under R.C. 5301.49(D) of the MTA by the Wills of William Webb and Billie Jean Ady. The Hartlines filed a notice of appeal on March 18, 2020.

On December 7, 2020, the Seventh District issued a decision affirming the trial court's judgment. The Hartlines filed an Application for Reconsideration on December 16, 2020. On February 25, 2021, the Seventh District denied the Hartlines' Application for Reconsideration. The Hartlines now appeal the decision of the Seventh District.

III. ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

A. Proposition of Law No. 1: An interest cannot "arise" out of a decedent's Will or Estate under R.C. 5301.49(D) if the decedent does not have record title to such interest.

It is undisputed that, determining marketability as of March 6, 2017, the date this action was filed, or at any time subsequent to May 1, 2002, the Hartlines' "root of title" is the warranty deed ("1962 Root of Title") from Glenna Ward, a widow, to Joseph W. Hartline dated April 24, 1962 and filed for recording at Volume 141, Page 444, Monroe County Deed Records. The Webb Interest was created prior to the effective date of the 1962 Root of Title. Therefore, in order to prevent the Webb Interest from being extinguished under R.C. 5301.50, there must be an exception to the Hartlines' record marketable title under R.C. 5301.49.

It is undisputed that none of the exceptions in R.C. 5301.49(A), (B), (C), or (E) apply. The only issue is whether the Webb Interest arose out of a recorded title transaction under R.C. 5301.49(D), which says that record marketable title is subject to any interest "arising out of

a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title or record is started."

The issue here is not whether it is possible for a Will or Estate to be considered a "title transaction" as defined under R.C. 5301.47(F). Revised Code 5301.49(D) specifically requires that an interest must "arise" out of a title transaction recorded subsequent to the root of title in order for a person's marketable record title to remain subject to such interest. An instrument that is recorded, but that cannot be traced back to the original grant because some previous instrument connecting it to the chain of title is unrecorded, lies outside the chain of title. *See Bank of Am., N.A. v. Corzin*, Case No. 5:09 CV 2520, 2010 U.S. Dist. LEXIS 8755, 15 (N.D. Ohio Feb. 2, 2010). Something that is outside the chain of title should not be considered a transaction "affecting title" to the interest and the interest should not be considered to "arise" out of such transaction under R.C. 5301.49(D) because this would undermine a person's ability rely on record title. See R.C. 5301.55. At least one Ohio Court has expressly held that a recorded title transaction under R.C. 5301.49(D) must appear within an unbroken chain of title. *See Capital Oil & Gas v. Measmer*, C.P. Mahoning No. 89 CV 2376, 1990 Ohio Misc. LEXIS 134 (Mar. 13, 1990).

Here, the Will of William C. Webb was filed in 1992 and the Will of Billie Jean Ady was filed in 1995. The trial court concluded that, because the Will of William C. Webb and the Will of Billie Jean Ady were "title transactions" recorded within 40 years subsequent to the effective date of the Hartlines' 1962 Root of Title, the Webb Interest was preserved under R.C. 5301.49(D). Although the Hartlines argued that any such title transactions must be recorded within an unbroken record chain of title, the trial court did not address this issue.

On appeal, the Seventh District rejected the Hartline's argument. It concluded that since Belle C. Webb had not actually transferred the Webb Interest during her life, it passed to her children when she died intestate in 1958. This analysis completely misses the point. At the time of death, property always passes automatically to a person's heirs at law when he dies intestate. *See In re Estate of Green*, 12th Dist. Warren Nos. CA2017-04-046, CA2017-04-047, 2018-Ohio-710, ¶44. Thus, interests in real property are always vested in living persons, whether they realize it or not, and regardless of whether their source of title appears of record.[3] But the MTA operates based on record title and in this case there was nothing of record to indicate that Belle C. Webb had died or that the Webb Interest had transferred from Belle C. Webb to William C. Webb until 2016. When William C. Webb's Will was filed in 1992, he had title to the Webb Interest, but he did not have record title to the Webb Interest.

As this Court has repeatedly recognized, the express purpose of the MTA is to "simplify[] and facilitat[e] land title transactions by allowing persons to rely on a record chain of title." *West*, ¶2. Here, there was nothing recorded within 40 years of Plaintiff's 1962 Root of Title indicating that Belle C. Webb had died or that the Webb Interest had ever transferred to William C. Webb. This means that, from 1962 to 2002, it appeared from the record chain of title that Belle C. Webb was the owner of the Webb Interest. The Webb Interest could not "arise" out of the Will of William C. Webb when it was filed in 1992 because William C. Webb was not the record owner of the Webb Interest at that time (or at any time prior to May 1, 2002). Based on the record title, it appeared that William C. Webb had predeceased his mother. Although documents were later recorded (in 2016, 2018, and 2019) showing that the Webb Interest had

[3] Indeed, this is why severed mineral interests often become so highly fractionalized and why identifying the current interest holders can become so difficult many decades after the holders of these interests have forgotten that they exist.

passed to William C. Webb when Belle C. Webb died intestate in 1958, these documents were not recorded within 40 years of the Hartlines' 1962 Root of Title. By 2016 the Webb Interest had already been extinguished by operation of R.C. 5301.50 because, as of May 1, 2002, the Hartlines had marketable record title to the Premises and there were no exceptions to the Hartlines' marketable title under R.C. 5301.49(D) that were filed within 40 years of the Hartlines' 1962 Root of Title.

B. Proposition of Law No. 2: An interest cannot "arise" out of a decedent's Will or Estate under R.C. 5301.49(D) if the Will or Estate does not specifically devise the interest or describe the property subject to the interest.

In order for the Wills of William C. Webb and Billie Jean Ady to affect title to the Webb Interest, and for the Webb Interest to "arise out of" the Wills, the Wills must satisfy the general requirements for any transfer of an interest in land. Under Ohio law, every conveyance of real property must contain a legal description that can be used to locate the land. *Scarberry v. Lawless*, 4th Dist. Lawrence No. 09CA18, 2010-Ohio-3395, ¶ 27 (citing *Griffin v. Griffin*, 12th Dist. Butler Nos. CA2003-03-076 and CA2003-04-081, 2004-Ohio-698). This description must be in writing and must afford reasonable certainty as to the land's identity and location. *Scarberry*, at ¶ 27 (citing 35 Ohio Jurisprudence 3d (2002) 264 deeds, §42 (footnotes omitted)). When the land cannot be located from the description, or when the description is so uncertain that it cannot be known what land was intended to be conveyed, the deed is void. *Id*. For the same reason, a Will does not affect title to an interest in land, and an interest in land does not arise out of a Will, if it does not specifically devise the interest or describe the property subject to the interest.

The General Assembly has repeatedly required that when documents are filed evidencing a transfer of an interest in real property at death, such documents must include a description of the property. Specifically, R.C. 2113.61(A) states that when real property passes

by the laws of intestate succession or under a Will, the administrator or executor shall file an application requesting the probate court to issue a certificate of transfer as to the real property. Within five days following the filing of the application, the probate court shall issue a certificate of transfer for record in each county where the real property is situated. Under R.C. 2113.61(C)(5), the certificate of transfer shall recite "A description of each parcel of real property being transferred." Even when real estate passes by intestacy without an Estate, an affidavit of real estate inherited under R.C. 317.22(B) is required to set forth "the part or portion of such real estate inherited" by each heir at law and next of kin. Therefore, in order for a filed or recorded Will to create an exception to marketable title for an interest under R.C. 5301.49(D), it should specifically devise the interest or describe the property affected by the interest.

C. Proposition of Law No. 3: A title transaction of an interest by one co-tenant under R.C. 5301.49(D) does not operate as a title transaction for all of the other co-tenants' interests.

At the time William C. Webb's Will was filed in 1992, his Estate owned just ½ of the Webb Interest. The other ½ belonged to Charles W. Bierie, Jr., Patricia Rude, and Paul Bierie, the surviving spouse and children of Marjorie L. Webb (who had died in 1991 with no Estate having been filed). Since there were no recorded title transactions from 1962 to 2002 for the ½ interest held by Marjorie Webb and her heirs, the Hartlines argued that this portion of the Webb Interest was not preserved by the filing of William C. Webb's Will under R.C. 5301.49(D). The ½ interest held by Charles W. Bierie, Jr., Patricia Rude, and Paul Bierie simply did not "arise" out of William C. Webb's Will when it was filed in 1992.

The exception for a title transaction under R.C. 5301.49(D) does not have the same effect as a claim to preserved filed under R.C. 5301.56(C)(2) (of the DMA).[4] The Seventh

[4] Revised Code 5301.56(C)(2) states that a claim to preserve filed by one holder preserves the rights of all holders of a mineral interest in the same land under the DMA.

District had recently recognized this distinction in *Richmond Mills, Inc. v. Ferraro*, 7th Dist. Jefferson No. 18JE0015, 2019-Ohio-5249. In that case, it held that the portion of a mineral interest belonging to two record holders was preserved under R.C. 5301.49(B) and 5301.51(B) but that the portion of a mineral interest belonging to two other record holders was extinguished. *Richmond Mills, Inc.* was consistent with the holding in *Capital Oil & Gas v. Measmer*, Mahoning C.P. Case No. 89 CV 2376, at 28, 1990 Ohio Misc. LEXIS 134 (Mar. 2, 1990).

The trial court's decision dismissing the Hartlines' MTA claim did not address this issue. When the Hartlines asked the Seventh District to remand the case to the trial court on this issue, the court of appeals did not address it either, so the Hartlines filed an Application for Reconsideration on December 16, 2020. The Seventh District did not dispute that the issue had been overlooked in its December 7, 2020 Opinion and Judgment Entry, but in its February 25, 2021 Opinion and Judgment Entry denying the Hartlines' Application for Reconsideration, it rejected the Hartlines' position. The court reasoned that *Richmond Mills* "addressed the continuous-possession requirement of the MTA set out in R.C. 5301.51(B)" and that the issue in this case "involved the exception of recording title transactions under R.C. 5301.49(D)." Reconsideration Opinion, ¶¶9-10. This distinction is completely meaningless; it does nothing more than acknowledge that these two exceptions to marketable record title are numbered differently. The court did not address any of the Hartlines' arguments concerning the actual language of the statute and it did not explain why the legislature would have intended to create such a blatant incongruity in how the various exceptions to marketable record title under R.C. 5301.49 should be applied.

D. Proposition of Law No. 4: The Dormant Mineral Act and the Marketable Title Act are independent, alternative statutory mechanism that may be used to reunite severed mineral interests with the surface property subject to those interests.

This proposition of law is a direct quote from this Court's recent ruling in *West v. Bode*, Slip Opinion No. 2019-1494, ¶2. Unfortunately, the Seventh District's analysis in its February 25, 2021 Opinion and Judgment Entry denying the Hartlines' Application for Reconsideration indicates that the court of appeals does not understand the implications of *West*. The Seventh District very strangely downplayed the legal significance of the distinction it had made between the exceptions to marketable record title under R.C. 5301.49(B) and R.C. 5301.49(D) by saying that, "even if the Webb Interest was not saved under the MTA, this court also found the Webb Interest was preserved under the DMA." Reconsideration, ¶11. Essentially, the court said it felt comfortable in summarily rejecting all of the Hartline's MTA arguments because it did not believe that any of them would have made a difference in the outcome of the case. Why? Because it had already dismissed the Hartline's DMA claims.

The Seventh District's misguided comment concerning the interplay between the DMA and the MTA is erroneous and will create significant confusion among courts attempting to apply these two statutes. *West* made clear (in December 2020--before the Seventh District's Reconsideration Opinion was issued on February 25, 2021), that the DMA and the MTA are alternate statutory mechanism that may be used to reunite severed mineral interests with the surface property subject to those interests. Thus, the fact that a mineral interest may have been preserved under the DMA is irrelevant to whether such interest has been preserved under the MTA.

E. Proposition of Law No. 5: The Duhig Rule is a rule of deed construction and, in an action to quiet title under R.C. 5303.01, the court should upon motion determine whether an adverse interest in such property has been affected by the Duhig Rule, even if the circumstances giving rise to the Duhig Rule's application have not been stated with particularity in the pleadings.

In this case, the application of the Duhig Rule was fully briefed with the trial court in the Hartlines' motion for summary judgment and the Webb Defendants filed a written response. The Webb Defendants never objected to the Hartlines' assertion of the Duhig Rule based on the pleadings. The trial court dismissed all of the Hartlines' claims against the Webb Defendants without addressing this issue. When the Hartlines asked the Seventh District to remand the case to the trial court on this issue, the Webb Defendants raised an objection to the Hartlines' pleadings for the first time on appeal (when it was too late for the Hartlines to amend their complaint). The Seventh District agreed with the Webb Defendants' objection, holding that the Hartlines' complaint "does not ask the court to define the parameters of the Webb Interest." It therefore concluded that, in order to obtain relief under the Duhig Rule, the Hartlines should have amended their complaint in order to assert a "new claim."

When a person in possession of real property brings a quiet title action under R.C. 5303.01 against a person who claims an interest adverse to him (as the Hartlines did against the Webb Defendants in the Tenth Claim of their complaint with respect to the Webb Interest), such action is "for the purpose of determining such adverse interest" (emphasis added). The Merriam Webster dictionary defines "determine" as "to fix conclusively or authoritatively." The Hartline's claim to quiet title to the Premises with regard to the Webb Interest clearly asked the trial court to "define the parameters of the Webb Interest." Nothing in R.C. 5303.01 says that the "determination" of an interest under this statute is limited to whether the interest is simply preserved or extinguished in its entirety.

There is no basis for saying that a new or separate claim (apart from a claim to quiet title) must be pled to assert the Duhig Rule. The Duhig Rule is a rule of deed construction, rather than a substantive rule of property law. *See Northern Oil & Gas, Inc. v. EOG Res., Inc.*, Case No. 1:16-cv-388, 2019 U.S. Dist. LEXIS 232508, fn. 1 (D. N. D. January 15, 2019)(citing *Duhig v. Peavy-Moore Lumber Co.*, 135 Tex. 503, 144 S.W.2d 878 (1940)). *See also Mason v. Buckman*, 2010 Ark. App. 256, at 7 ("This is a rule of construction, not a rule of property law."); *Manson v. Magee*, 534 So.2d 545, 548 (Miss. 1988)(describing the Duhig Rule as a "rule of construction"); *Continental Oil Co. v. Doornbos*, 402 S.W.2d 879, 883 (Tex. 1966)("The Duhig rule is to be applied to ascertain the meaning of an instrument in the absence of an appeal to equity."). Thus, the Duhig Rule does not extinguish, forfeit, or abandon an interest in land; rather, it is a rule of deed construction which says that, in certain scenarios, a purported interest cannot have been reserved, excepted, or created in the first place.

In any action to quiet title, there may be a multitude of rules regarding deed construction that apply. A request to quiet title based on any of these rules of deed construction is not the assertion of a "new claim." None of these, or any other rules of deed construction, must be specifically pled. The Hartlines' attempt to quiet title to the Premises based on the Duhig Rule therefore does not require that this rule be specifically or separately pled in a "new claim." The determination of the Webb Interest in the Hartlines' quiet title action under R.C. 5303.01 includes defining the parameters of such adverse interest under the Duhig Rule. The Seventh District therefore should not have affirmed the dismissal of the Hartlines' claim to quiet title under the Duhig Rule based on the way it had been pled.

F. Proposition of Law No. 6: If a landowner files an action to quiet title to a mineral interest under the DMA, such mineral interest is abandoned and vested in the landowner if the requirements of R.C. 5301.56(E) are satisfied and none of R.C. 5301.56(B)(1) through (3) apply.

The Hartline's incorporate by reference their arguments about this proposition of law as set forth in their Memorandum in Support of Jurisdiction in Case No. 2021-0054.

G. Proposition of Law No. 7: If a mineral holder is not prevented under R.C. 5301.56(H)(2) from presenting the record of a mineral interest in court as evidence against the owner of the surface of the lands formerly subject to the interest, insufficient service of the R.C. 5301.56(E)(1) notice on the mineral holder is harmless and irrelevant to whether a mineral interest has been abandoned under R.C. 5301.56(B) or (H)(2).

The Hartline's incorporate by reference their arguments about this proposition of law as set forth in their Memorandum in Support of Jurisdiction in Case No. 2021-0054.

H. Proposition of Law No. 8: A landowner may satisfy the requirements of R.C. 5301.56 (E)(1) by including the notice with a complaint to quiet title, which is served upon the mineral holder by certified mail, return receipt requested, in accordance with Civ.R. 4.1(A)(1)(a).

The Seventh District's Opinion and Judgment Entry did not address this issue because it dismissed the Hartline's DMA claim on the basis of the Webb Defendants' timely response to the R.C. 5301.56(E)(1) notice under R.C. 5301.56(H)(1). But, since the Hartlines' R.C. 5301.56(E)(1) notice was served on the Webb Defendants in exactly the same way as in *Hartline v. Atkinson*, Case No. 2021-0054, the manner in which the notice was served will become a material issue if this Court adopts Proposition of Law No. 6 or Proposition of Law No. 7. The Hartline's incorporate by reference their arguments about this proposition of law as set forth in their Memorandum in Support of Jurisdiction in Case No. 2021-0054.

IV. CONCLUSION

For all of the foregoing reasons, this is a matter of public or great general interest; this Court should therefore accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Memorandum in Support of Jurisdiction of Appellants, Kerry R. Hartline and Mary E. Hartline** was served upon the following party by emailing same on this 5th day of April, 2021:

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