[Cite as *Dougherty v. Abarta Oil & Gas Co., Inc.*, 2023-Ohio-1279.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JACQUELYN K. DOUGHERTY, et al.,	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiffs - Appellants	:	Hon. Craig R. Baldwin, J.
	:	Hon. Andrew J. King, J.
-vs-	:	
	:	
ABARTA OIL & GAS CO., INC., et al.,	:	Case No. 22CA000019
	:	
Defendants - Appellees	:	O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Guernsey County Court of Common Pleas, Case No. 18-OG-458

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT: April 18, 2023

APPEARANCES:

For Plaintiffs-Appellants

JOHN C. FINNUCAN
Finnucan & Associates, LLC
97 West Drive
Hartville, Ohio 44632

JEFFREY A. YEAGER
ELISE K. YARNELL
Hahn Loeser & Parks LLP
65 East State Street, Suite 1400
Columbus, Ohio 43215

JAMES MATHEWS
Baker Dulikar Beck Wiley & Mathews
400 S. Main Street
North Canton, Ohio 44720

For Defendant-Appellee Capstone Holding Co.

ERIK A. SCHRAMM, SR.
KYLE W. BICKFORD
ERIK A. SCHRAMM, JR.
Hanlon, McCormick, Schramm,
Bickford & Schramm Co., LPA
46457 National Rd. West
St. Clairsville, Ohio 43950

For Defendant-Appellee MFC Drilling, Inc.

PHILIP F. DOWNEY
Vorys Sater Seymour and Pease LLP
50 S. Main Street, Suite 1200
Akron, Ohio 44308

TIMOTHY B. MCGRANOR
JAMES A. CARR II
Vorys Sater Seymour and Pease LLP
52 E. Gay Street, P.O. Box 1008
Columbus, Ohio 43215-1008

Baldwin, J.

{¶1} Jacquelyn K. Dougherty and eight additional individuals claiming an interest in the subject real property appeal the decision of the Guernsey County Court of Common Pleas granting summary judgment in favor of Appellee, Capstone Holding Company, holding that the Marketable Title Act extinguished the interest that they claimed. Appellants also appeal the trial court's finding that they committed slander of title and were liable for damages. MFC Drilling, Inc. is also an Appellee in this matter.

STATEMENT OF FACTS AND THE CASE

{¶2} This case began with Appellants' complaint, seeking an order from the trial court "[d]eclaring and determining that the plaintiffs are the lawful owners of the Mineral Interest in dispute in this action" and that a lease granted to appellee MFC Drilling was therefore void. Appellees opposed Appellants' efforts and sought judgment for damages arising out of an alleged slander of title. The trial court resolved the issue of title to the mineral interests by granting summary judgment to appellee Capstone after finding that the Ohio Marketable Title Act extinguished the mineral interest claimed by Appellants. The claim for slander of title was tried to the court and the court found against Appellants and awarded damages and attorney fees to Appellees.

{¶3} Appellants claimed title to the mineral interests in a parcel of property and conceded that Appellee, Capstone, was the titled owner of the surface estate. Within their complaint, Appellants traced the chain of title for the property, noting that on February 5, 1954 the owners of the parcel, James H. Kennon and John David Kennon conveyed their interest in the surface estate to Robert S. Peters and Frank McCormick, with the following reservation:

> Excepting and reserving to the Grantors, their heirs and assigns all oil and gas lying under and within the premises hereby conveyed with the right to enter on said premises, to drill for, develop, produce, store and remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may be necessary therefore.

Complaint, Exhibit A, page 2.

{¶4} Appellants claim to be heirs of the Kennon family and claim ownership of the reserved interest in the oil and gas.

{¶5} Appellee Capstone acquired title to the property on November 12, 1990 via a limited warranty deed. However, this interest was obtained by a predecessor of Capstone via a deed in 1964. This deed, from Robert S. Peters to Seaway Coal Company, contains the following language:

> EXCEPTING AND RESERVING, as previously accepted and reserved, all oil and gas lying under in within the premises hereby conveyed with the right to enter on said premises, to draw for, develop, produce, store in remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may be necessary therefore.
>
> Deed References: Vol. 419, Page 186, and Vol. 428, Page 438 Belmont County Deed Records; and Vol. 227, Page 497, and Vol. 266, Page 255, Guernsey County Deed Records.

Exhibit B, page 2, Plaintiff's Motion for Summary Judgment, Dec. 26, 2018.

{¶6} The deed references appended to the exception incorporate the deed that created the reservation. The Guernsey County deed found at Vol. 227, Page 497 is the Kennon to Peters/McCormick Deed that created the exception in 1954, Exhibit A to Plaintiff's complaint as referenced above. The Guernsey County deed found at Vol. 236, Page 255 reflects a conveyance from McCormick to Peters that contains the aforementioned exception and a note that the property being conveyed was acquired from J.H. Kennon and John David Kennon by deed dated April, 8, 1953, a reference that connects this deed to the deed that created the exception. That deed, found at Vol. 227, Page 497 in the Guernsey County Records, was not recorded until February 5, 1954, but it was executed by the Grantors on April 8, 1953.

{¶7} None of the facts regarding the chain of title to the property and the mineral interests were disputed and the parties filed competing motions for summary judgment regarding that issue. The focus of those motions was the application and impact of the Marketable Title Act. The trial court granted summary judgment in favor of Appellees finding that the Marketable Title Act extinguished the interests claimed by Appellants.

{¶8} After the ruling on summary judgment, appellee Capstone's claims regarding slander of title were tried to the court and judgment was issued in favor of Appellee holding that Appellants had committed slander of title. The foundation of that judgment was the finding that the Marketable Title Act had extinguished Appellants' claimed mineral interest and that title to those interests was held by Appellee, Capstone.

{¶9} Appellants filed a timely notice of appeal and submitted three assignments of error:

{¶10} "I. THE TRIAL COURT ERRED BY GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS-APPELLEES AND NOT PLAINTIFFS-APPELLANTS,

BECAUSE THE ROOT OF TITLE SPECIFICALLY REFERENCED AND PRESERVED PLAINTIFFS' OIL AND GAS INTEREST UNDER THE MARKETABLE TITLE ACT. [EXHIBIT B, ENTRY ON SUMMARY JUDGMENT (FILED AUG. 29, 2019).]"

{¶11} "II. THE TRIAL COURT ERRED BY ENTERING JUDGMENT IN FAVOR OF CAPSTONE HOLDING COMPANY ON ITS CLAIM FOR SLANDER OF TITLE BECAUSE PLAINTIFFS-APPELLANTS, NOT CAPSTONE, OWN THE OIL AND GAS RIGHTS. [EXHIBIT B, ENTRY ON SUMMARY JUDGMENT (FILED AUG. 29, 2019).]"

{¶12} "III. THE TRIAL COURT ERRED BY DENYING PLAINTIFFS' MOTION FOR INVOLUNTARY DISMISSAL AND BY ENTERING JUDGMENT IN FAVOR OF CAPSTONE HOLDING COMPANY ON ITS CLAIM FOR SLANDER OF TITLE, BECAUSE PLAINTIFFS' RECORDED AFFIDAVITS WERE NOT MATERIALLY FALSE AND BECAUSE THEY WERE RECORDED WITH A REASONABLE FACTUAL AND LEGAL BASIS, WITHOUT MALICE OR RECKLESSNESS. [EXHIBIT A, FINAL JUDGMENT ENTRY (FILED JUNE 8, 2022).]"

STANDARD OF REVIEW

{¶13} We review cases involving a grant of summary judgment using a de novo standard of review. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, 767 N.E.2d 707, at ¶ 24. Summary judgment is appropriately granted when " '(1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.' " *Esber Beverage Co. v. Labatt USA Operating*

Co., 138 Ohio St.3d 71, 2013-Ohio-4544, 3 N.E.3d 1173, ¶ 9, quoting *M.H. v. Cuyahoga Falls*, 134 Ohio St.3d 65, 2012-Ohio-5336, 979 N.E.2d 1261, ¶ 12, internal citation omitted; Civ.R. 56(C).

{¶14} A trial court should not enter a summary judgment if it appears a material fact is genuinely disputed, nor if, construing the allegations most favorably towards the non-moving party, reasonable minds could draw different conclusions from the undisputed facts. *Hounshell v. Am. States Ins. Co.*, 67 Ohio St.2d 427, 433, 424 N.E.2d 311 (1981). The court may not resolve any ambiguities in the evidence presented. *Inland Refuse Transfer Co. v. Browning–Ferris Inds. of Ohio, Inc.*, 15 Ohio St.3d 321, 323, 474 N.E.2d 271 (1984). A fact is material if it affects the outcome of the case under the applicable substantive law. *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304, 733 N.E.2d 1186 (6th Dist. 1999).

{¶15} The party moving for summary judgment bears the initial burden of informing the trial court of the basis of the motion and identifying the portions of the record which demonstrates absence of a genuine issue of fact on a material element of the non-moving party's claim. *Wentling v. David Motor Coach Ltd.,* 111 N.E.3d 610, 615, 2018 - Ohio- 1618, ¶ 23, quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). Once the moving party meets its initial burden, the burden shifts to the non-moving party to set forth specific facts demonstrating a genuine issue of material fact does exist. *Id.* The non-moving party may not rest upon the allegations and denials in the pleadings, but instead must submit some evidentiary materials showing a genuine dispute over material facts. *Downtown Enterprises Co. v. Mullet*, 5th Dist. Holmes No. 17CA016, 2018-Ohio-3228, ¶ 50, citing *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988).

{¶16} Moreover, as noted by this Court in *Matrix Acquisitions, LLC v. Styler*, 5th Dist. Tuscarawas No. 2010AP040014, 2010-Ohio-5343, 2010 WL 4345754 at ¶ 17:

> The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.

ANALYSIS

I.

{¶17} In their first assignment of error, Appellants claim that the trial court erred by granting summary judgment in favor of Defendants-Appellees and not Plaintiffs-Appellants, because the root of title specifically referenced and preserved Plaintiffs' oil and gas interest under the Marketable Title Act. The Marketable Title Act plays a central role in the trial court's holding and the parties' analysis of the facts, so we begin our review with a consideration of the relevant portions of that Act and recent precedent interpreting those sections. Our review will then consider the application of the Act to the undisputed, material facts in the record.

{¶18} The General Assembly enacted the Marketable Title Act, R.C. 5301.47 *et seq.*, in 1961, Am.H.B. No. 81, 129 Ohio Laws 1040, to extinguish 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." R.C. 5301.55. This legislation provides that marketable record title—an unbroken chain of title to an interest in land for 40 years or more, R.C. 5301.48—"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, R.C. 5301.47(A), which "are hereby declared to be null and void," R.C. 5301.50.

{¶19} When initially enacted, the Marketable Title Act did not "bar or extinguish any right, title, estate, or interest in and to minerals, and any mining or other rights appurtenant thereto or exercisable in connection therewith." Former R.C. 5301.53(E), 129 Ohio Laws at 1046. The Legislature amended the Act in 1973 to include mineral interest. Am.S.B. No. 267, 135 Ohio Laws, Part I, 942–943; *Corban v. Chesapeake Expl., L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, 76 N.E.3d 1089, ¶¶ 17-18.

{¶20} The Supreme Court of Ohio has rejected a suggestion that that the purpose of the Marketable Title Act is to limit title searches to forty years. "Indeed, we have declined to view the act's purpose as solely to limit the length of time required for title searches. *Heifner v. Bradford*, 4 Ohio St.3d 49, 53, 446 N.E.2d 440 (1983), fn. 4. As one commentator put it shortly after the act was passed, '[t]he Act is designed to assure a reasonable title search, not to serve as a cure-all for title matters.' Smith, *The New Marketable Title Act*, 22 Ohio St.L.J. 712, 717 (1961)." *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132, ⁋ 16.

{¶21} The language in the Act relevant to the matter before us provides that:

> Such record marketable title shall be subject to: * * * 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 * * *

R.C. 5301.49(A)

{¶22} This language "is directed at the 'common conveyancing practice for draftsmen to include in the deed description some such language as 'subject to easements and use restrictions of record.' * * * [S]uch a general reference leaves it unclear whether a prior interest in fact exists,'" * * * and "the Model Act * * * makes such a general reference inadequate to preserve the ancient interests even though the general reference appears in the muniments of title which make up the forty year chain." *Erickson v. Morrison,* 165 Ohio St.3d 76, 2021-Ohio-746, 176 N.E.3d 1, ¶ 30, *reconsideration denied,* 163 Ohio St.3d 1430, 2021-Ohio-1721, 168 N.E.3d 526, ¶ 30.

{¶23} The Supreme Court of Ohio provided instruction for the analysis of claims brought under this Act in *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, 122 N.E.3d 132 and *Erickson v. Morrison*, 165 Ohio St.3d 76, 2021-Ohio-746, 176 N.E.3d 1, both of which addressed an analogous factual situation where the root of title contained a reference to a previously created interest. In *Blackstone,* the Court opened its opinion by focusing on the narrow issue before it:

> Ohio's Marketable Title Act generally allows a landowner who has an unbroken chain of title to land for a 40-year period to transfer title free of any interests that existed prior to the beginning of the chain of title. Under the act, however, an earlier-created interest is preserved if sufficient reference is made to the interest within that chain of title. The question we must answer is what type of reference is sufficient to preserve that interest.

Blackstone supra at ⁋ 1.

{¶24} The Court resisted the Blackstone's invitation to establish a bright line rule and instead adopted the three-step inquiry contained within R.C. 5301.49: (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 supra* at ⁋ 12.

{¶25} In an acknowledgment that the inquiry focuses on the terms "general" and "specific" the Court noted that because the Code does not provide definitions of the terms it would look to the ordinary meaning of the terms:

> "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,* 6 Ohio St.3d at 341, 453 N.E.2d 639. "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.

Blackstone supra at ⁋ 13-14.

{¶26} The Court found that:

> The reference to the Kuhn royalty interest includes details and particulars about the interest in question. And the interest is accurately described. Moreover, the reference is "free from * * * ambiguity." *Id.* The exception that is noted in the 1969 deed includes information about the type of interest created— "one-half interest in oil and gas royalty" and specifies by whom the interest was originally reserved— "Nick Kuhn, their [sic] heirs and assigns." There is no question which interest is referenced in the 1969 deed. Thus, it is a specific *453 reference. Because the reference to the Kuhn heirs was not a general reference, there is no need to proceed to the third question—that is, whether a general reference contains a specific identification of a recorded title transaction.

Blackstone supra at ⁋ 15.

{¶27} The Court concluded by holding that "a reference that includes the type of interest created and to whom the interest was granted is sufficiently specific to preserve the interest in the record title." *Blackstone, supra* at ⁋ 18.

{¶28} In *Erickson* the Court made clear its position that its opinion in *Blackstone* was not intended to establish a bright line rule but only that the reference at issue was

sufficient to preserve the interest it described. *Erickson, supra* at ⁋ 22. The *Blackstone* decision did state that including the name of the party receiving the reserved interest was sufficient to create a specific grant that preserved that interest, but the *Erickson* Court made it clear that they had not established a bright-line rule that an interest created prior to the root of title is preserved only if a reference to it includes "either the volume and page number where the interest was created or the date that the interest was recorded" and the Court emphasized that it was obligated to apply "statutes as they are written, and nowhere does the Marketable Title Act require reference to the volume and page number or the date that the interest was recorded." *Id*. In *Erickson,* the Court relied upon the repeated appearance of the reservation in the chain of title and held that "the root of title and subsequent conveyances of the surface rights are made subject to a specific, identifiable reservation of mineral rights using the same language that created it. Notwithstanding its failure to name the owner of the reserved rights, this reference is sufficient to preserve them from being extinguished under Ohio's Marketable Title Act. *Erickson, supra* at ¶ 35.

{¶29} We note that the Court was again cautious in its language and did not state the holding as a requirement for future cases but found that the repeated reference to the reservation using the same language was sufficiently specific to preserve the interest it described.

{¶30} The Supreme Court of Ohio has made clear that there is no bright line test that can be applied to the facts of this case to determine whether the reference to the reservation of oil and gas rights protected that interested from extinguishment by the Ohio Marketable Title Act. Instead, the Court directs us to apply the three-step analysis set forth in *Blackstone* and *Erickson* to gauge the specificity of the reservation keeping in

mind that "R.C. 5301.49(A) is directed at the* * * common conveyancing practice for draftsmen to include in the deed description some such language as 'subject to easements and use restrictions of record.'" *Erickson*, *supra* at ¶ 30. We must also remember that ""[t]he Act is designed to assure a reasonable title search, not to serve as a cure-all for title matters." Smith, *The New Marketable Title Act*, 22 Ohio St.L.J. 712, 717 (1961)." *Blackstone*, *supra* at ⁋ 16.

{¶31} Further, as part of our analysis we are mindful of whether the reservation serves as a notice of an outstanding interest in the real property at issue, and what burden the Marketable Title Act imposes on Appellee to investigate references within the deed at issue incorporating by reference the content of prior deeds. *Morgenstern v. Natl. City Bank of Cleveland*, 4th Dist. Washington No. 85 CA 33, 1987 WL 5754 *7; *Cleveland Co-Op. Stove Co. v. Cleveland & P. Ry.,* 23 Ohio C.C.(N.S.) 260, 1912 WL 1556, *2 (Dec. 16, 1912).

{¶32} This court has found that "The MTA extinguishes oil and gas rights by operation of law after 40 years from the effective date of the root of title unless a saving event preserving the interest appeared in the record chain of title, i.e., the interest was specifically identified in the muniments of title in a subsequent title transaction, the holder recorded a notice claiming the interest, or the interest arose out of a title transaction which has been recorded subsequent to the effective date of the root of title. *Id.*; R.C. 5301.48." *McCombs v. Dennis*, 5th Dist. No. 2020CA00148, 2021-Ohio-1181, 171 N.E.3d 786, ¶ 10, *appeal not allowed,* 163 Ohio St.3d 1516, 2021-Ohio-2615, 171 N.E.3d 349, *reconsideration denied,* 164 Ohio St.3d 1462, 2021-Ohio-3594. The issue before us in this case is whether the interest in question "was specifically identified in the muniments of title in a subsequent title transaction." *Id.*

{¶33} The parties agree that Appellee's root of title is the deed from Robert B. Peters to Seaway Coal Company, recorded in Guernsey County on May 22, 1964. The relevant portion of that deed states:

> EXCEPTING AND RESERVING, as previously excepted and reserved, all oil and gas lying under and within the premises hereby conveyed with the right to enter on said premises, to drill for, develop, produce, store and remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may be necessary therefor.
>
> Deed References: Vol. 419, Page 186, and Vol: 428, Page 438, Belmont County Deed Records; and Vol. 227, Page 497, and Vol. 236, Page 255, Guernsey County Deed Records.

{¶34} The Appellants contended that the reference to deeds in both Guernsey and Belmont Counties reflects the fact that the property transferred was located in both counties and that the language of the exception in the deeds is identical. The Guernsey County Deed Reference, Vol. 227, Page 497 refer to the deed in which the Grantors first inserted the reservation. That reservation contains the same language as the reservation in the Peters Deed with minor changes:

> Excepting and reserving to the Grantors, their heirs and assigns all oil and gas lying under and within the premises hereby conveyed with the right to enter on said premises, to drill for, develop, produce, store and remove the same with necessary machinery and equipment necessary for such

> purpose and the right to use so much of the surface as may be necessary therefor.

Guernsey County Deed, Vol. 227, Page 497.

{¶35} The Guernsey County deed recorded at Vol. 236, Page 255 altered the exception to reflect that it referenced a prior exception by replacing the text "to the Grantors, their heirs and assigns" with "as previously excepted and reserved" but the balance of the reservation is unchanged:

> EXCEPTING AND RESERVING, as previously excepted and reserved, all oil and gas lying under and within the premises hereby conveyed with the right to enter on said premises, to drill for, develop, produce, store and remove the same with necessary machinery and equipment necessary for such purpose and the right to use so much of the surface as may be necessary therefor.

Guernsey County Deed, Vol. 236, Page 255.

{¶36} These facts are undisputed, so we proceed with the analysis mandated by R.C. 5301.49 and the Supreme Court of Ohio in *Blackstone* and *Erickson*: "(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?"

DESCRIBED INTEREST

{¶37} The reservation in the root of title deed not only preserves the right to all oil and gas within and under the premises, but it includes comprehensive rights to enter the property and to drill for, develop, produce, store the gas and oil with any machinery

required with no restriction on the amount of surface area to be used to facilitate the extraction of oil and gas. The interest preserved by this reservation is well defined and we find that it satisfies the first step of the analysis.

REFERENCE TO THE INTEREST

{¶38} While the language of the reference is detailed regarding the retained interest, we find that there is nothing within the reference that can serve to identify to whom the interest is reserved, relying upon the language "As previously excepted and reserved" but not specifically setting out to whom the interest was reserved. We find that the reservation is general, and therefore we must continue to the third step of the analysis.

SPECIFIC IDENTIFICATION OF A RECORDED TITLE TRANSACTION

{¶39} The language of the exception is followed by references to four recorded title transactions, two of which are identified in the record before us. One recorded title transaction, Guernsey County Deed Vol. 227, Page 497 is the document in which the reservation was created. This reference would provide a title searcher specific information regarding the identity of the persons who created the interest and retained title to the oil and gas with all the additional rights described in the reservation. Further, the language of the reservation in all the deeds are virtually identical, the only change reflecting the fact that the reservation was created by the Grantors in an earlier deed. The Marketable Title Act was "designed to assure a reasonable title search, not to serve as a cure-all for title matters" and we find that a reasonable title search was all that was required to discover the required details regarding the interest reserved by the deeds. *Blackstone*, *supra* at ⁋16. The reference to the prior deeds provides a clear notice to a title examiner that the deed being examined and the exception contained within it are linked to a prior deed that

is identified by volume and page number and that a complete search would include reviewing the referenced deeds

{¶40} The trial court completed this analysis and though it reached the same conclusion regarding the first and second step, that an interest was described and that the interest was general, we find that the trial court erred in its analysis of whether the general reference contains a specific identification of a recorded title transaction when it found that:

> the general reference does not contain a specific identification of a recorded title transfer. It does however list several prior deed references from both Belmont County and Guernsey County. No specific identification is made of the parties to the reservation." (Entry, Aug. 29, 2019, page 4).

{¶41} The trial court confirms its ruling on page 5 of the Entry stating that "the court further finds that no specific identification of a recorded title transfer is made within the exception."

{¶42} We find that the prior deed references do identify recorded "title transfers" as we find that phrase synonymous with "title transaction." A "title transaction" "means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage." R.C. 5301.47 (F). The Supreme Court in *Erickson* described the series of deeds upon which the Appellants therein relied as "recorded title transactions." *Erickson, supra* at ¶ 1. The trial court does not explain its rational for finding that "no specific identification of a recorded title transfer is made within the exception" and we will not speculate as to its reasons. We do find that the trial court erred in its analysis and that the prior deed

references do identify specific recorded title transactions satisfying the third step in the analysis and that, therefor, the language of the exception was sufficient to preserve the Appellants' claimed interest.

{¶43} To the extent the trial court is relying upon the lack of the name of the parties to whom the interest in reserved, we find that the Supreme Court of Ohio found that reference to a name in a reservation of an interest is not a mandatory requirement. *Erickson, supra* at ⁋ 35.

{¶44} The Appellants first assignment of error is well taken.

II., III

{¶45} Appellant's second and third assignments of error focus upon the trial court's awarding judgment for slander of title to Appellees. The trial court's award was based upon its findings of fact, the first paragraph of which states as follows:

> Pursuant to this Court's August 29, 2019 entry, the Kennon Exception was declared vested in Defendant Capstone Holding Company ("Capstone") by virtue of an unbroken chain of title for more than forty (40) years with the root of title being the deed from Robert S. Peters, married, to Seaway Coal Company, an Ohio Corporation, dated December 15, 1963 filed for record May 21, 1964 and recorded in volume 260, page 1128 of the Guernsey County deed records which serve to extinguish the Kennon Exception under the Ohio Marketable Title Act (O. R. C. 2307.47 et seq.). *See Joint Exhibit* 10.

Entry, June 8, 2022, page 2.

{¶46} Our resolution of the first assignment of error undermines the basis for this finding of fact. We have found that the Kennon Exception as described by the trial court

was preserved and not extinguished by the Ohio Marketable Title Act and therefore the trial court's ruling regarding slander of title can no longer rely upon this foundational finding. Because we have found that the Ohio Marketable Title Act did not extinguish the Appellants' interest, the basis for finding that Appellants committed slander of title no longer exists. For that reason, we vacate the trial court's decision of June 8, 2022.

{¶47} The decision of the Guernsey County Court of Common Pleas granting summary judgment in favor of Appellees is hereby vacated and the trial court is ordered to enter summary judgment in favor of Appellants holding that their claimed interest was preserved by the Marketable Title Act. Consequently, we also hold that the trial court's decision granting judgment against the Appellees for slander of title must be vacated in its entirety. This matter is remanded to the trial court for further proceedings consistent with this opinion.

By: Baldwin, J.

Hoffman, P.J. and

King, J. concur.

[Cite as *Dougherty v. Abarta Oil & Gas Co., Inc.*, 2023-Ohio-1279.]