[Cite as *Long Point Energy, L.L.C. v. Gulfport Energy Corp.*, 2026-Ohio-3343.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

LONG POINT ENERGY, LLC,

Plaintiff-Appellant,

v.

GULFPORT ENERGY CORP., ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 26 BE 0007

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 23-CV-115

BEFORE:
Katelyn Dickey, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Christopher M. Hogan, Hogan Thompson Schuelke LLP, *Atty. Michael J. Shaheen* and *Atty. Diane G. Senakievich*, Shaheen Law Group, *Atty. Timothy B. Pettorini, Atty. J. Benjamin Fraifogl* and *Atty. Jeremy D. Martin*, Roetzel & Andress, LPA, for Plaintiff-Appellant Long Point Energy, LLC and

Atty. Craig J. Wilson, C.J. Wilson Law, LLC, for Defendants-Appellees Michael A. Perkins, Jill E. Perkins, Mitchell G. Perkins, Dedra D. Perkins, Phillip J. Perkins, Jackie M. Perkins and Nancy L. Garrison and

Atty. John Kevin West and *Atty. John C. Ferrell*, Steptoe & Johnson PLLC, for Defendants-Appellees Gulfport Appalachia, LLC and Rice Drilling D, LLC.

Dated: August 26, 2026

DICKEY, J.

{¶1} Appellant, Long Point Energy, LLC ("Long Point"), appeals from the December 30, 2025 judgment of the Belmont County Court of Common Pleas granting Appellees', Michael A. Perkins, Jill E. Perkins, Mitchell G. Perkins, Dedra D. Perkins, Phillip J. Perkins, Jackie M. Perkins, and Nancy L. Garrison (the "Perkins"), partial motion for judgment on the pleadings against Long Point and denying Long Point's motion to strike the Perkins' reply brief in litigation over ownership of severed oil and gas interests underlying approximately 198 acres owned by the Perkins. Gulfport Appalachia, LLC ("Gulfport") and Rice Drilling D, LLC ("Rice") are also Appellees.

{¶2} This oil and gas case involves Long Point's causes of action for declaratory judgment, quiet title, and tort claims premised on its asserted ownership of a portion of the severed mineral estate previously declared abandoned under the Ohio Dormant Mineral Act ("DMA"), R.C. 5301.56, along with a challenge to the trial court's interlocutory management of briefing.

{¶3} On appeal, Long Point argues the trial court erred in granting the Perkins' partial motion for judgment on the pleadings finding that Long Point has no standing to assert its claims. Long Point also contends the court erred in failing to strike the Perkins' reply brief or, in the alternative, in failing to grant Long Point leave to file a sur-reply.

{¶4} Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶5} This matter pertaining to the DMA presents a set of facts involving the issue of standing that has become very familiar to this court.

{¶6} The Perkins (the surface owners) own two tracts of land (among others) totaling approximately 198 acres in Washington Township, Belmont County, Ohio, Tax Parcel Nos. 43-00331.000, 43-00331.001, and 43-00330.000 (collectively the "Property").

{¶7} In 1947 and 1948, Bertha E. Freudiger owned the Property. Bertha conveyed the Property via two deeds ("Freudiger Deeds" or "Severance Deeds") in which she excepted all of the oil and gas rights in the Property (the "Freudiger Interest"). In

1962, Bertha died testate and her will left the Freudiger Interest to Martha Zigler but her estate was not administered until 2020. By mesne conveyances, the Freudiger Interest eventually came to be owned by Ruth Kissinger, Gene Zigler, Delores Drabestott, Paul Hershey, and Larry Hershey (the "Freudiger Heirs"). The Freudiger Interest was purportedly conveyed to Remora, LLC, Willow Point Corporation ("Willow Point"), and L.D. Jenkins by quit claim deeds.

{¶8} In 2011, the Perkins used the DMA in R.C. 5301.56 to deem the Freudiger Interest abandoned. On June 9, 2011, the Perkins served notice by publication to "Bertha E. Freudiger, her unknown heirs, devisees, executors, administrators, relicts, next of kin, and assigns" (the "DMA Notice"). (4/26/2023 Complaint, Exhibit Q). On July 20, 2011, the Perkins recorded an Affidavit of Abandonment with the Belmont County Recorder ("Recorder").

{¶9} Exactly 60 days after publication of the DMA Notice, on August 8, 2011, William R. Parr ("Parr"), President of Willow Point, executed and recorded a document (the "Claim to Preserve") purporting to preserve a claim to the Freudiger Interest. *See* (4/26/2023 Complaint, Exhibit R). The 13-page Claim to Preserve did not include a "jurat" (a certification by the notary public that Parr's statement was sworn). Instead, the Claim to Preserve included an "Individual Acknowledgment" in which the notary public affirmed only that Parr personally appeared before the notary and that his signature was voluntary.

{¶10} As of August 8, 2011, Parr did not possess any ownership in the Freudiger Interest. Neither Parr's signature nor the acknowledgment indicated that Parr was executing the document in his capacity as an officer or agent of Willow Point. On August 29, 2011, the Perkins' counsel filed a letter with the Recorder requesting marginal notations on the Severance Deeds pursuant to the DMA. *See* (4/26/2023 Complaint, Exhibit S). The letter specifically states that the Claim to Preserve is "a nullity" because Parr is not a "holder" as defined in the DMA. (*Id.*). The Recorder made the requested marginal notations on the Severance Deeds, thereby completing the abandonment process under the DMA.

{¶11} Due to the potential cloud on title created by Parr's Claim to Preserve, the Perkins filed an in rem quiet title action in the Belmont County Court of Common Pleas in October 2011, Case No. 11-CV-400, against Parr, Remora, LLC, Willow Point, and L.D.

Jenkins seeking a judicial declaration that the Freudiger Interest was abandoned by the DMA in favor of the Perkins ("First Lawsuit"). That action concluded in August 2012, with the trial court entering an Agreed Judgment Entry, recorded on August 10, 2012, declaring that the mineral interest was abandoned under both the 1989 DMA and the 2006 DMA and vested in the Perkins (the fee simple owners of both the surface and the oil and gas rights in the Property).

{¶12} In 2013, the Perkins entered into oil and gas leases for the Property with Rice. Rice assigned portions of the leases to Gulfport. In 2014 and 2015, Gulfport and Rice included the Property in three drilling units in which they drilled wells that are producing natural gas. In 2019, the Freudiger Heirs purportedly conveyed a collective 29/36ths interest in the Freudiger Interest to Long Point.

{¶13} In September 2020, after allegedly acquiring some of the Freudiger Interest, Long Point filed an action against the Perkins, Gulfport, and Rice in the Southern District Court of Ohio ("Second Lawsuit"). *Long Point Energy, LLC v. Gulfport Energy Corp*., 2023 WL 2652378 (S.D. Ohio Mar. 27, 2023), *rev'd and remanded*, *Long Point Energy, LLC v. Gulfport Energy Corp*., 2025 WL 76249 (6th Cir. Jan. 10, 2025). In that complaint, Long Point sought a declaration that the Freudiger Interest was not abandoned, it owned 29/36ths of the Freudiger Interest, and it was owed damages for certain tort claims (among other claims not related to the subject Property).

{¶14} The federal district court held it lacked jurisdiction regarding the Property given the Agreed Judgment Entry in the First Lawsuit under the *Rooker-Feldman* doctrine and it dismissed Long Point's complaint. The district court also rejected Long Point's argument that it, by way of its predecessors in title (Freudiger Heirs) was not a state court loser because its predecessors were not named as parties in the First Lawsuit. That court found the Freudiger Heirs had knowledge of the First Lawsuit, had notice of the recorded Agreed Judgment Entry, and the action was in rem such that Long Point can be considered a state court loser.

{¶15} On April 26, 2023, Long Point filed a complaint in this matter asserting the Freudiger Interest was not abandoned by the Perkins ("Third Lawsuit"). This Third Lawsuit involves the same disputed oil and gas rights. Long Point asserts eight claims related to the 198 acres: count one, declaratory judgment; count two, quiet title; count three, trespass; count four, conversion; counts five and six, waste; count seven, accounting of rents and profits; and count eight, unjust enrichment and equitable disgorgement. Long Point also asserts claims of intentional tort and waste against Gulfport and Rice for drilling and producing from wells under leases from the Perkins. Those wells had already been producing for several years before Long Point was involved with the Property.

{¶16} On June 20, 2023, the Perkins filed a motion for a more definitive statement as Long Point failed to attach documents that it referenced in the complaint. One week later, Gulfport and Rice filed a motion to strike insufficient claims from the complaint.

{¶17} On March 18, 2024, the Perkins withdrew their motion for a more definitive statement and filed objections, answer, affirmative defenses, counterclaim, and cross-claim. The Perkins asserted a two-count counterclaim against Long Point: count one, declaratory judgment that the Freudiger Interest was abandoned by the DMA; and count two, a quiet title claim that the Freudiger Interest is vested in the Perkins. The Perkins also filed a six count cross-claim against Gulfport and Rice: count one, declaratory judgment that the leases did not convey rights to any formations below the base of the Utica Shale, including the Point Pleasant Formation; count two, willful subsurface trespass; count three, conversion; count four, unjust enrichment; count five, waste; and count six, indemnification.

{¶18} Gulfport and Rice then improperly removed the Perkins' cross-claims to federal court and those claims were later remanded. *Long Point Energy, LLC v. Gulfport Appalachia, LLC*, 2025 WL 606440 (S.D. Ohio Feb. 25, 2025). These cross-claims are stayed at the trial court level pending this appeal.

{¶19} Upon remand, the Perkins filed a motion arguing that Long Point lacked standing. Long Point responded it had standing because of Parr's Claim to Preserve and it was not bound by the Agreed Judgment Entry in the First Lawsuit. In reply, the Perkins argued: (1) the complaint clearly alleges Long Point acquired the Freudiger Interest after it did not exist in the public record; (2) the Claim to Preserve was withdrawn and rescinded and failed to comply with R.C. 5301.52 requirements; and (3) Long Point is bound by the Agreed Judgment Entry in the First Lawsuit. Long Point then filed a motion to strike the

Perkins' reply brief alleging ambush because the Perkins were rebutting the arguments it made in its response brief.

{¶20} On October 22, 2025, the trial court entered an agreed dismissal order dismissing, with prejudice, counts one through five of the Perkins' cross-claim against Gulfport and Rice.

{¶21} On December 30, 2025, the trial court agreed with the Perkins that Long Point lacked standing to assert its claims in this case under this court's recent decisions in *Cardinal Minerals, LLC v. Miller*, 2024-Ohio-2133 (7th Dist.) ("*Cardinal Minerals I*"); *Cardinal Minerals, LLC v. Miller*, 2024-Ohio-3121 (7th Dist.) ("*Cardinal Minerals II*"); *Cardinal Minerals, LLC v. Blatt*, 2025-Ohio-1159 (7th Dist.) ("*Cardinal Minerals III*") (collectively the "*Cardinal* Cases"); and *Ohio River Resources, LLC v. Westfall*, 2025-Ohio-2379 (7th Dist.) ("*Ohio River*") and stayed the Perkins' remaining cross-claim pending this appeal. The court found that Long Point has done the same thing as the plaintiffs in the *Cardinal* Cases and *Ohio River*, i.e., attempting to purchase an interest that no longer exists in the public record. Specifically, the court stated:

> 25. The Court finds the facts of this case, as pled by Plaintiff Long Point, are substantively identical to those in [*Cardinal Minerals v.*] *Miller I* and [*Ohio River v.*] *Westfall*:
>
> a. An interest in the oil and gas estate was severed from the surface of the Property by virtue of the Freudiger Deeds. . . .
>
> b. The Freudiger Heirs eventually acquired the Freudiger Interest by testate and intestate succession. . . .
>
> c. The Perkins Defendants acquired the Property subject to the Freudiger Interest. . . .
>
> d. The Perkins Defendants proceeded with the abandonment process outlined by R.C. 5301.56 by publishing notice of abandonment, recording an affidavit of abandonment, and noting on the margin of the Freudiger Deeds that the Freudiger Interest was abandoned. . . .

> e. Following the filing of the abandonment documents, the Perkins Defendants filed a quiet title lawsuit, which resulted in an Agreed Judgment in the Prior Litigation that indicates the Freudiger Interest was abandoned. . . .
>
> f. Thereafter, the Perkins Defendants executed oil and gas leases for the Property, and the Lessee Defendants (Rice and Gulfport) began producing oil and gas from the same. . . .
>
> g. Eight years after completing the abandonment and vesting of the Freudiger Interest in the surface owners, in 2019, Plaintiff Long Point attempted to acquire the abandoned of-record Freudiger Interest from the Freudiger Heirs. . . .
>
> h. Plaintiff Long Point complains of multiple deficiencies in the abandonment process and quiet title lawsuit, arguing the abandonment was invalid and they are not bound by the resulting judgment entry. . . .
>
> 26. As stated in *Cardinal Minerals* and *Westfall*, no interest in real property was conveyed to Long Point because the Freudiger Interest had already been abandoned eight years earlier. Long Point cannot "step into the shoes" of the Freudiger Heirs.
>
> 27. Long Point lacks standing to raise its claims contained in the Complaint. The Court grants the Perkins Defendants' Motion, and enters judgment on the pleadings against Plaintiff.

(12/30/2025 Judgment Entry, p. 5-6).

{¶22} Long Point filed a timely appeal and raises three assignments of error. Long Point suggests it did not "'designate'" Gulfport and Rice as Appellees. (5/4/2026 Appellant's Reply Brief, p. 1). However, Long Point's notice of appeal includes a Certificate of Service to serve counsel for the Perkins and counsel for Gulfport and Rice. In addition, on March 23, 2026, Long Point filed a brief with a Certificate of Service to serve counsel for Appellees the Perkins and counsel for Appellees Gulfport and Rice. On April 10, 2026, the Perkins filed a brief. On April 13, 2026, Gulfport and Rice filed a brief. On April 30, 2026, Long Point filed a reply to the Perkins' brief. On May 4, 2026, Long Point filed a reply to Gulfport's and Rice's brief. Thus, this court will review and consider the responsive arguments raised by Gulfport and Rice.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN GRANTING MICHAEL A. PERKINS, JILL E. PERKINS, MITCHELL G. PERKINS, DEDRA D. PERKINS, PHILLIP J. PERKINS, JACKIE M. PERKINS, AND NANCY L. GARRISON'S (COLLECTIVELY, THE "PERKINS DEFENDANTS" OR "APPELLEES") PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS (THE "MOTION") ON THE QUESTION OF WHETHER LONG POINT HAS STANDING AFTER PURCHASING OIL AND GAS INTERESTS WHEN A MINERAL HOLDER FILED A TIMELY CLAIM TO PRESERVE.

ASSIGNMENT OF ERROR NO. 3

THE TRIAL COURT ERRED IN GRANTING APPELLEES' MOTION, EVEN CONSIDERING THE ARGUMENTS RAISED FOR THE FIRST TIME IN APPELLEES' REPLY ON THE QUESTION OF WHETHER LONG POINT HAS STANDING AFTER PURCHASING OIL AND GAS INTERESTS WHEN A MINERAL HOLDER FILED A TIMELY CLAIM TO PRESERVE.

{¶23} In its first assignment of error, Long Point argues the trial court erred in granting the Perkins' partial motion for judgment on the pleadings on the question of whether Long Point has standing after purchasing oil and gas interests when an alleged mineral holder filed a timely claim to preserve.

{¶24} In its third assignment of error, Long Point contends the trial court erred in granting the Perkins' motion even considering the arguments raised for the first time in the Perkins' reply on the question of whether Long Point has standing after purchasing oil and gas interests when an alleged mineral holder filed a timely claim to preserve.

{¶25} Because Long Point's first and third assignments of error are interrelated, as they both raise the issue of standing, we will consider them together for ease of discussion.

> This Court conducts a de novo review of a trial court's ruling on a Civ.R. 12(C) motion for judgment on the pleadings. *Pelletier v. Mercy Health Youngstown*, LLC., 2024-Ohio-2131, ¶ 10, 2024 WL 2830779 (7th Dist.), citing *Ahmed v. Sargus*, 2005-Ohio-2382, ¶ 7, 2005 WL 1152471 (7th Dist.). We give no deference to the trial court's decision and apply the same principles as those used in analyzing a Civ.R. 12(B)(6) motion to dismiss. *See Woods v. Sharkin,* 2022-Ohio-1949, ¶ 29, 192 N.E.3d 1174 (8th Dist.). Thus, we construe the material allegations of the complaint as true with all reasonable inferences taken in favor of the nonmoving party. Dismissal under Civ.R. 12(C) is proper "only if it appears beyond doubt that the plaintiff can prove no set of facts entitling him or her to relief." *Maternal Grandmother v. Hamilton Cty. Dept. of Job and Fam. Servs.*, 2021-Ohio-4096, ¶ 13, 167 Ohio St.3d 390, 193 N.E.3d 536, quoting *Reister v. Gardner*, 2020-Ohio-5484, ¶ 17, 164 Ohio St.3d 546, 174 N.E.3d 713.

Stewart v. Gentile, 2025-Ohio-5012, ¶ 22 (7th Dist.).

{¶26} "[N]either due process nor the rules of civil procedure require the trial court to conduct a hearing on a motion for judgment on the pleadings filed under Civ.R. 12(C). *Meyers v. First Natl. Bank* (1981), 3 Ohio App.3d 209, 444 N.E.2d 412." *Smith v. O'Daugherty*, 1991 WL 207267, *2 (1st Dist. Oct. 9, 1991).

> "'[S]tanding is to be determined as of the commencement of suit.'" *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 18, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 24, quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 570-571, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992), fn. 5. "'[P]ost-filing events that supply standing that did not exist on filing

> may be disregarded, denying standing despite a showing of sufficient present injury caused by the challenged acts and capable of judicial redress.'" *Schwartzwald* at ¶ 26, quoting 13A Wright, Miller & Cooper, *Federal Practice and Procedure* 9, Section 3531 (2008). Assignment of rights to a lawsuit are void. *See Rancman v. Interim Settlement Funding Corp.,* 99 Ohio St.3d 121, 2003-Ohio-2721, 789 N.E.2d 217, ¶ 11.

Cardinal Minerals I, 2024-Ohio-2133, at ¶ 26 (7th Dist.).

{¶27} R.C. 5301.56, "Abandonment and preservation of mineral interests," states in part:

> Immediately after the notice of failure to file a mineral interest is recorded, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest.

R.C. 5301.56(H)(2)(c).

{¶28} Here, Long Point's complaint expressly alleges it is a subsequent purchaser of record of an abandoned mineral right. Long Point claims the Perkins completed the requirements of the DMA in 2011 and recorded the required notice of failure to file. Long Point alleges there was an Agreed Judgment Entry in the First Lawsuit that completed in 2012 confirming abandonment of the Freudiger Interest. Long Point claims it acquired the Freudiger Interest in 2019. Like in *Ohio River*, the face of the complaint demonstrates Long Point lacks standing.

{¶29} In granting the Perkins' partial motion for judgment on the pleadings, the trial court properly relied on the *Cardinal* Cases and *Ohio River* to find that Long Point lacks standing to assert its claims in this case. The *Cardinal* Cases and *Ohio River* all rest on the same basic premise: if a surface owner invokes the procedures of the DMA and causes a marginal notation to be made on the severance deed, the holder, rather than a third party who attempts to purchase the holder's interest, must be the one to challenge the validity of the abandonment.

{¶30} The *Cardinal* Cases all involved alleged defects in the surface owner's notice to the holders. *Cardinal Minerals I*, 2024-Ohio-2133, at ¶ 32 (7th Dist.); *Cardinal Minerals II,* 2024-Ohio-3121, at ¶ 8 (7th Dist.); *Cardinal Minerals III*, 2025-Ohio-1159, at ¶ 9 (7th Dist.). In *Ohio River*, the plaintiff argued that the rule from the *Cardinal* Cases is limited to matters where defective notice is alleged. *Ohio River*, 2025-Ohio-2379, at ¶ 53 (7th Dist.). The plaintiff attempted to distinguish the *Cardinal* Cases by asserting that the notice and affidavit of abandonment were facially defective because they included the incorrect volume and page number for the mineral interest. *Id.* at ¶ 54. This court rejected that argument holding that "[a]ny alleged deficiencies with the surface owner's compliance with the abandonment process, like here, must be challenged in court." *Id.* at ¶ 64. Because the marginal notation of abandonment was placed on the severance deed before the plaintiff purported to acquire its interest, this court held that the plaintiff "lack[ed] standing to challenge the abandonment process." *Id.* at ¶ 66.

{¶31} The same reasoning applies here. On August 29, 2011, the Perkins' counsel filed a letter with the Recorder requesting marginal notations on the Severance Deeds pursuant to the DMA. *See* (4/26/2023 Complaint, Exhibit S). The Severance Deeds contain the requested marginal notations. *See* (4/26/2023 Complaint, Exhibits B, C). Thus, as in the *Cardinal* Cases and *Ohio River*, "the record chain of title showed abandonment was complete" before Long Point purported to acquire its interest in 2019. *Ohio River* at ¶ 66.

{¶32} Long Point asserts that the timely Claim to Preserve filed by Parr prevents application of the *Cardinal* Cases and *Ohio River*. This is incorrect for three reasons.

{¶33} First, standing under the DMA is tied to "holder" status. Here, the Claim to Preserve was not filed by a "holder" of the Freudiger Interest as expressly required by the DMA.

{¶34} Under the DMA, a claim to preserve may be "filed for record by [the] holder" of the mineral interest. R.C. 5301.56(C)(1). The "holder" is "the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder." R.C. 5301.56(A)(1).

{¶35} When the Claim to Preserve was filed, Parr was not a record holder nor had he derived any rights to the Freudiger Interest from a record holder. The Freudiger Interest was purportedly conveyed to Remora, LLC, Willow Point, and L.D. Jenkins by quit claim deeds. Parr executed the Claim to Preserve in his individual capacity only. Although Parr is identified in the body of the document as the President of Willow Point, the signature line does not reveal that Parr signed the instrument as a representative of Willow Point. The acknowledgment is identified as an "Individual Acknowledgment" rather than a corporate acknowledgment and it is not in the statutory form of a corporate acknowledgement. *See* R.C. 147.55(B) (corporate acknowledgment includes statement that the officer is signing "on behalf of the corporation").

{¶36} Long Point offers no justification for these deficiencies. Long Point instead relies on *Miller v. Rice Drilling D LLC,* 2023-Ohio-3588 (7th Dist.) arguing that a claim to preserve may be filed by a party who turns out not to be a holder. In *Miller*, this court found that R.C. 5301.52 does not require the claim to preserve to be filed by an undisputed holder. *Miller* at ¶ 114. However, this court specifically limited its holding to the "unique facts" of that case. *Id.* at ¶ 94 ("Based on the unique facts here, we disagree, but limit our holding to the facts of this case.") In *Miller*, the Stillion heirs filed their claim to preserve timely and in response to notice served upon them by certified mail identifying them as persons who may own an interest. *Id.* at ¶ 111. The notice by publication also identified them as persons who may own an interest. *Id.* Because the Stillion heirs were specifically notified by the surface owners that they were holders, this court concluded that their claim to preserve was valid even if they did not actually own an interest in the minerals. *Id.* at ¶ 114.

{¶37} Unlike *Miller*, in the case at bar, the Perkins served the DMA Notice to "Bertha E. Freudiger, her unknown heirs, devisees, executors, administrators, relicts, next of kin, and assigns." (4/26/2023 Complaint, Exhibit Q). The Perkins did not identify Parr as a potential holder of the Freudiger Interest. Also, in discussing the claim to preserve in *Miller*, this court did not apply the definition of "holder" from the DMA. R.C. 5301.56(E) requires the surface owner to serve notice by certified mail to the "holder" of the intent to declare the mineral interest abandoned, or, if service cannot be completed to any holder, then such intent is to be published in a newspaper. R.C. 5301.56(H)(1) then shifts the burden onto a holder, or its successor, to file a claim to preserve within 60 days of service or publication. In stating that the claim to preserve in *Miller* need not be filed by an actual owner of the mineral interest, this court focused on the requirements of R.C. 5301.52. *Miller* at ¶ 114 ("There is no requirement in R.C. 5301.52 that the claim to preserve be filed by an undisputed and actual holder. Instead, the statute requires the claim be filed by one who attests to their ownership of an interest in the property under oath.") The fact remains that the DMA requires a claim to preserve to be filed by the "holder," which does not include someone who merely claims to own an interest. *See* R.C. 5301.56(A)(1) and (H)(1). Thus, Long Point's reliance on *Miller* is misplaced. *Miller*, which was limited to its "unique facts," does not apply here.

{¶38} Second, even if standing were to exist, a claim can still fail if the affidavit is not compliant under the DMA. Here, the Claim to Preserve is not "in the form of an affidavit" as required under R.C. 5301.56(C)(1)(b) and R.C. 5301.52(A)(1).

{¶39} Under the DMA, a "claim to preserve a mineral interest from being deemed abandoned" must contain a notice that "complies with section 5301.52 of the [Ohio] Revised Code." R.C. 5301.56(C)(1)(b) (effective June 30, 2006). Under R.C. 5301.52, a notice must "[b]e in the form of an affidavit[.]" R.C. 5301.52(A)(1). "An affidavit is a written declaration under oath, made without notice to the adverse party." R.C. 2319.02.

{¶40} Ohio has "never recognized any exception" to the statutory requirement that an affidavit be made "under oath." *Toledo Bar Assn. v. Neller*, 2004-Ohio-2895, ¶ 21. In addition, the Supreme Court of Ohio has held that a mere "acknowledgment" in an instrument otherwise styled as an "affidavit" is insufficient to constitute an affidavit. *State ex rel. Evergreen Co. v. Bd. of Elections of Franklin Cty.*, 48 Ohio St.2d 29, 31-32 (1976).

{¶41} Like *Evergreen*, the Claim to Preserve in this case is styled as an "Affidavit" and states in the first line that the "'Affiant'" was "first duly sworn according to law." (4/26/2023 Complaint, Exhibit R). However, the notary public's certificate is a mere "Individual Acknowledgment," stating that Parr "personally appeared," "executed" the instrument, and "acknowledged" that its execution was voluntary. (*Id.* at p. 13). Under *Evergreen*, this is insufficient to constitute an affidavit.

{¶42} Long Point cites to *State ex rel. Maras v. LaRose*, 2022-Ohio-3295, asserting that the Claim to Preserve qualifies as an affidavit for purposes of the DMA. However, Long Point's reliance on *Maras* is misplaced because *Maras* applied a later statutory framework. Long Point analyzes the Claim to Preserve under the lens of a new statute, as viewed by the court in *Maras*, rather than the law at the time the Claim to Preserve was executed. At the relevant time, Ohio courts strictly enforced the oath requirement. Thus, because the Claim to Preserve was not "in the form of an affidavit," it is defective under the DMA.

{¶43} Third, the Agreed Judgment Entry in the First Lawsuit, in addition to the marginal notations on the Severance Deeds, reveal that the Freudiger Interest did not exist in the public record which deprives Long Point of standing.

{¶44} *Ohio River* aptly summarized the underlying principle of the *Cardinal* Cases: "Because Cardinal had accepted transfers of interests which *did not exist in the public record*, it did not acquire an interest and could not constitute a holder as that term is defined." (Emphasis added). *Ohio River*, 2025-Ohio-2379, at ¶ 65 (7th Dist.). In addition, Long Point faces another hurdle to its standing, i.e., a recorded judgment entry from the First Lawsuit declaring the Freudiger Interest abandoned. In the Agreed Judgment Entry, which was recorded on August 10, 2012, nine years before Long Point purportedly acquired its interest, the trial court stated:

> 1. The reservations of certain oil and gas rights by Bertha E. Freudiger, her heirs and assigns, recorded in Volume 368, Page 338 and in Volume 368, Page 380 of the Deed Records of Belmont County, Ohio are, and have been, abandoned by virtue of operation of the Ohio Dormant Minerals Act, Revised Code Section 5301.56, both in its present version (as amended June 30, 2006) and as this section of law existed prior to June 30, 2006 (enacted March 22, 1989);
>
> 2. Plaintiffs are the fee simple owners of both the surface and the oil and gas rights in and to the Real Property described in Paragraph 1 of Plaintiffs' Complaint and in the attached Exhibit A.

(3/18/2024 Perkins' Objections, Answer, Affirmative Defenses, Counterclaim, and Crossclaim, Exhibit 12, 8/10/2012 Agreed Judgment Entry, p. 2).

{¶45} Thus, in addition to the abandonment documents under the DMA, the Agreed Judgment Entry publicly establishes that the Freudiger Interest was abandoned and vested in the Perkins seven years before Long Point attempted to acquire the same. Here, like in *Ohio River*, Long Point's argument regarding the Claim to Preserve is irrelevant and does not establish standing. Even if the Claim to Preserve was valid, once this Agreed Judgment Entry was recorded, the Freudiger Interest "did not exist in the public record" and, therefore, Long Point could not acquire it. *Ohio River* at ¶ 65. Long Point attempts to reframe this issue under res judicata.

{¶46} Res judicata bars subsequent actions on the same claims between the same parties or those in privity with them. *Brown v. Dayton*, 89 Ohio St.3d 245, 247 (2000). "[M]utuality of interest, including an identity of desired result, creates privity." *Id.* at 248. To hold otherwise would subject a successful litigant to "constant attack simply by replenishing the ranks of plaintiffs." *Id.*

{¶47} Long Point claims that it cannot be bound by the Agreed Judgment Entry because it was not a party to the First Lawsuit and did not sign the entry. This is not true. Long Point can be found to be bound if "the parties to the subsequent suit [are] the same or in privity with the parties to the original suit." *O'Nesti v. DeBartolo Realty Corp.*, 2007-Ohio-1102, ¶ 9. Long Point also claims that the Freudiger Heirs (from whom it purportedly acquired its interest) were not parties to the Agreed Judgment Entry and, therefore, are not bound by it. However, the Freudiger Heirs (from whom Long Point ultimately obtained its deeds) shared a mutuality of interest and desired the same result as the parties to the Agreed Judgment Entry.

{¶48} Here, Long Point is in privity with the defendants in the First Lawsuit because they had identical interests and desired the same outcome. The defendants in the First Lawsuit argued the DMA did not abandon the Freudiger Interest. Long Point and the defendants in the First Lawsuit derived their interest in the Freudiger Interest from a common source, i.e., the Freudiger Heirs. The complaint in the First Lawsuit alleged the Freudiger Interest was abandoned by the DMA and that Parr's affidavit was a nullity to prevent abandonment. The defendants in the First Lawsuit were defending the validity of the Freudiger Interest and the Claim to Preserve. This is the same argument made in this case and they share the same desired outcome. The federal district court recently confirmed there was privity between Long Point and the defendants in the First Lawsuit when it held the *Rooker-Feldman* doctrine applied. *See Long Point*, 2023 WL 2652378, * 7 (S.D. Ohio Mar. 27, 2023). This finding is also supported by the idea that the First Lawsuit was an in rem action. *Id.* at * 8.

{¶49} The fact that the Agreed Judgment Entry was entered by consent of the parties does not limit its preclusive effect on the parties and those in privity with them. *See Evans v. Evans*, 1999 WL 741168, * 2 (12th Dist. Sept. 20, 1999). Because there was a mutuality of interest between the Freudiger Heirs and the defendants in the First Lawsuit, privity exists with respect to Long Point which prevents re-litigating the same matter already resolved.

{¶50} Regardless of whether Long Point is bound by the Agreed Judgment Entry under res judicata, the fact remains that it attempted to acquire an interest that "did not exist in the public record." *Ohio River*, 2025-Ohio-2379 at ¶ 65 (7th Dist.). Accordingly, the trial court properly found that Long Point lacks standing.

{¶51} Lastly, any new additional arguments raised by Long Point, including public record ambiguity, champerty and maintenance, and no right to withdraw or rescind the Claim to Preserve, were not argued or addressed by the trial court and, therefore, are not properly before this court. *See Omran v. Lucas*, 2021-Ohio-4592, ¶ 48 (7th Dist.).

{¶52} Long Point's first and third assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN FAILING TO STRIKE ARGUMENTS RAISED FOR THE FIRST TIME IN APPELLEES' REPLY IN SUPPORT OF THEIR PARTIAL MOTION FOR JUDGMENT ON THE PLEADINGS (THE "REPLY"), OR, IN THE ALTERNATIVE, IN FAILING TO GRANT APPELLANT LEAVE TO FILE A SUR-REPLY.

{¶53} In its second assignment of error, Long Point asserts the trial court erred in denying its motion to strike or, alternatively, to file a sur-reply.

{¶54} "'A trial court's decision to grant or deny a motion to strike is within its sound discretion and will not be overturned on appeal unless the trial court abuses its discretion.'" *Roth v. Fitch, Kendall, Cecil, Robinson & Barry Co., LPA*, 2024-Ohio-2559, ¶ 83 (7th Dist.), quoting *Douglass v. Salem Community Hosp.*, 2003-Ohio-4006, ¶ 20 (7th Dist.). An abuse of discretion occurs when a court exercises its judgment "in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶55} Long Point's motion to strike the Perkins' reply brief was nothing more than an attempt to file a second response brief. Long Point raised certain arguments in its response to the Perkins' motion for judgment on the pleadings that the Perkins simply rebutted in their reply.

{¶56} In its response, Long Point argued it had standing alleging the abandonment was facially defective and it was not bound by the Agreed Judgment Entry. Long Point asserted the filing of the Claim to Preserve safeguarded the Freudiger Interest for all mineral holders under R.C. 5301.56(C)(2) and there could not have been any abandonment of the same. Long Point claimed the *Cardinal* Cases do not apply as there was no claim to preserve filed in those cases. Long Point also raised, out of an abundance of caution, that it has standing despite the First Lawsuit because its predecessors-in-title were not made parties to that litigation.

{¶57} The Perkins directly addressed Long Point's arguments in their reply. The Perkins argued the preservation claim that Long Point raised in its response was withdrawn and rescinded in the Agreed Judgment Entry in the First Lawsuit so it could not be a source of standing. The Perkins asserted that the Agreed Judgment Entry publicly confirms there was abandonment of the Freudiger Interest prior to Long Point's purported acquisition of the same. The Perkins also argued the Claim to Preserve that Long Point was relying upon did not comply with R.C. 5301.56 requirements, and thus had no legal effect to prevent abandonment. Lastly, the Perkins addressed Long Point's argument that it is not bound by the First Lawsuit because of res judicata and privity.

{¶58} The purpose of a reply is to rebut arguments raised in a response. *See Pond v. E and E Towing and Recovery, LLC,* 2024-Ohio-800, ¶ 13 (10th Dist.). In discussing the Claim to Preserve and the Agreed Judgment Entry, the Perkins simply countered arguments made by Long Point in its response to their motion. Thus, the trial court did not abuse its discretion in denying Long Point's motion to strike or, alternatively, to file a sur-reply.

{¶59} Long Point's second assignment of error is without merit.

CONCLUSION

{¶60} For the foregoing reasons, Long Point's assignments of error are not well-taken. The December 30, 2025 judgment of the Belmont County Court of Common Pleas granting the Perkins' partial motion for judgment on the pleadings against Long Point and denying Long Point's motion to strike the Perkins' reply brief in litigation over ownership of severed oil and gas interests underlying the Property owned by the Perkins is affirmed.

Robb, J., concurs.

Hanni, J., dissents with dissenting opinion.

Hanni, J., dissenting.

{¶61} With regard and respect to my colleagues, I must dissent from the Majority Opinion. I would reverse the trial court's judgment in favor of Appellees on their motion for judgment on the pleadings.

{¶62} I agree with Appellant that the trial court failed to address the salient issue here: the Claim to Preserve filed by Willow Point. The trial court applied our decisions in *Cardinal Minerals, LLC v. Miller,* 2024-Ohio-3121 (7th Dist.) and *Ohio River Resources, LLC v. Westfall,* 2025-Ohio-2379, ¶ 66 (7th Dist.) to hold that the Freudiger Interest was abandoned and vested in the surface owners eight years prior to Long Point's attempt to acquire the Freudiger Interest from the Freudiger Heirs.

{¶63} However, *Cardinal Minerals* and *Westfall* are distinguishable from the instant case. No Claims to Preserve were filed in either of those cases. Further, abandonment was not complete in the instant case as in those cases because Mr. Parr filed the Claim to Preserve within the statutory 60-day filing period of Appellees' notice to declare the interest abandoned. The Claim to Preserve therefore preserved the rights of all parties, including Long Point. R.C. 5301.56(C)(2); *Jefferis Real Estate Oil & Gas Holdings, LLC v. Schaffner Law Offices, L.P.A.,* 2018-Ohio-3733, ¶ 15 (7th Dist.), citing *Dodd v. Croskey*, 2015-Ohio-2362, ¶ 30.

{¶64} Moreover, I would find that the validity of the Claim to Preserve based on Mr. Parr's signature and the lack of a jurat are factual issues not subject to legal resolution in a Civ.R. 12(C) motion. However, even if these issues are matters of law subject to such a motion, I agree with Appellant that pursuant to the Ohio Supreme Court's holding in *State ex rel. Maras v. LaRose*, 2022-Ohio-3295, the Claim to Preserve as a whole constituted a valid affidavit.

{¶65} The Majority relies on *State ex rel. Evergreen Co. v. Bd. of Elections of Franklin Cty.,* 48 Ohio St.2d 29, 31-32 (1976), to find that the Claim to Preserve in this case is not a valid affidavit. However, in *Grinder v. Schaaf,* 2026-Ohio-312, ¶ 22 (11th Dist.), the Eleventh District Court of Appeals concluded that the most recent Ohio Supreme Court decision contradicted *Evergreen* without acknowledging or overruling that decision. The Eleventh District applied settled law that Ohio appellate courts are bound by the Supreme Court's last decision on an issue when Ohio Supreme Court cases conflict. *Id.* at ¶ 25 (citations omitted). Thus, applying *Maras,* the *Grinder* Court read the documents in full and found that the affidavits submitted in its case were valid even though they were not jurats, but acknowledgements*. Id.* I would find the same as to the instant affidavit by Mr. Parr. The body of the document refers to his capacity as the president of Willow Point and the Claim to Preserve further stated that he was "first duly sworn according to law, on oath."

{¶66} In addition, I would find that the Agreed Judgment Entry did not bind Long Point. Long Point was not a party to the agreement or litigation upon which the Agreement Judgment Entry was based. We held as much in *Miller v. Rice Drilling D LLC*., 2023-Ohio-3588, ¶ 103 (7th Dist.) (". . . a settlement agreement or judgment issued in a different case is not binding in subsequent litigation involving different parties.").

{¶67} For these reasons, I would reverse the trial court's judgment.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs to be taxed against the Appellant.

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.