UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1723

September Term, 2015

JAMES H. ELLIS, *et al.*

v.

OLIN McKENZIE, *et.al.*

Woodward,
Berger,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: February 10, 2017

This case arises from a judgment of the Circuit Court for Garrett County, terminating appellants' dormant mineral interests and merging them into appellees' surface estates. The tracts of land in question were conveyed from 1884 through 1898 in a series of deeds, wherein the underlying mineral property interests were reserved. Appellees owned the surface estates, and in 2013, filed a petition under the Dormant Mineral Interests Act seeking a judgment to merge the severed mineral interests into their surface estates. Appellants either owned the mineral interests or are beneficiaries of testamentary estates that did. The parties reached a factual stipulation prior to trial, which was submitted to the Court. Following argument, the Circuit Court issued a Memorandum Opinion and Order, granting appellee's petition.

On appeal, appellants present the following questions for our review:

1. Does the DMIA violate the Maryland Constitution and Declaration of Rights, by extinguishing vested property rights and transferring them to a third person without compensation?

2. Is a notice of intent to preserve a severed mineral interest effective if recorded by the owner while an action to terminate the interest is pending against someone else but before the petition is amended to name the owner as a respondent?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

BACKGROUND

Appellees are seven landowners of farm tracts comprising approximately 430 acres in Garrett County.[1] The tracts were once owned by Sarah Wright, who, from 1884 through

[1] Appellees are Olin L. McKenzie and Christine A. McKenzie, Personal Representatives of the Estate of Roger M. McKenzie; Happy Hills Farm, LLC; Charles R. Sterrett and Harriet M. Sterrett; Peter Herzfeld and Patsy Newell; Brian J. Hasslinger and Claire Hasslinger; Robert E. Schetrompf and Mildred P. Schetrompf, Trustees; and Glenn A. Durst.

1898, conveyed the surface interests of the tracts but retained the mineral interests. Wright died in 1900, devising her property to four individuals. These shares later descended to multiple heirs and descendants. Appellees, after discovering that the mineral interests in their properties had been severed, commissioned a study by a local genealogy expert, which identified 76 present heirs and descendants who had inherited Wright's mineral interests.

On January 10, 2013, appellees filed a petition to terminate the mineral interests of the Wright heirs or descendants under the Dormant Mineral Interests Act (the "DMIA"). Env. § 15-1203(a)(1). Service was made on the 76 individuals identified by the study either *in personam* or by publication. Judgments of Default were entered against 46 heirs.

The remaining respondents (including the appellants[2]) filed Answers raising various defenses, including the unconstitutionality of the DMIA and issues involving the identities of named or missing parties. Specifically, appellants averred that appellees incorrectly stated that Edward C. Boyce, Kenneth Boyce, and Lester Boyce had died and named their unknown heirs. Appellants also asserted appellees failed to name the Personal

[2] Appellants are James H. Ellis, Frederick F. Ellis; Barba E. Chirgwin; Marilyn Ellis; Susan Ellis; William H. Strickler, individually; William H. Strickler, Personal Representative of the Estate of Margaret H. Wright Morehouse; Carol L. Maxwell (identified as "Carol L. Smith" in the petition and the judgment); John M. Wright, individually; John M. Wright, Personal Representative of the Estate of Walter William Wright; Thomas W. Wright; Lee E. Wright; Dorothy Taggart Belotte Rutan, individually; Dorothy Taggart Belotte Rutan, Personal Represenative of the Estate of Dorothy G. Wright; John T. Belotte; Barbara (Hafer) Sloane; Doris (Hafer) Erb, individually; Doris Hafer Erb, Personal Representative of the Estate of Helen L. Hafer; Dorothy (Hafer) Wardrip; Edward C. Boyce; Kenneth Boyce; Betty (Boyce) Nailor; Leslie W. Boyce; Thomas F. Weaver, III; Thomas F. Weaver, III, Personal Representative of the Estate of Thomas F. Weaver, Sr., Russel L. Weaver, Eleanor J. Weaver, Gerald Kiel, Karen (Kiel) McNichols, Thomas Kiel, Robert H. Weaver, Jr., Nicholas Weaver, Laura (Weaver) Donovan, Lynda (Weaver) Wachowiak, George Thomsen, Personal Representative of the Estate of Emma Englar Ellis, and Carol L. Maxwell, Personal Representative of the Estate of Martha L. Wright Smith (the personal representative was identified as Janet L. Smith Duncan in the judgment.)

Representatives of Emma Englar Ellis and Helen L. Patchen Hafer, as required by the Estates & Trusts Article,[3] and instead named their descendants.

In response, appellees filed a series of discovery requests, seeking to ascertain the names and identities of the missing parties. On May 27, 2015, they submitted their fourth and final amended petition, joining all of the persons who had inherited Wright's mineral interests.

Before appellees filed their final amended petition, the five above named individuals recorded a notice of intention to preserve mineral interest, pursuant to DMIA § 15-1204. George Thomsen, as Personal Representative of the Estate of Emma Englar Ellis, recorded his notice on April 10, 2013. Doris J. Erb, as Personal Representative of the Estate of Helen Patchen Hafer, filed her notice on April 19, 2013. Edward C. Boyce, on behalf of himself and his brothers, filed notice on June 27, 2013.

Thereafter, the case was scheduled for trial in the Circuit Court for Garrett County. However, the parties reached a comprehensive stipulation of factual statements, which was submitted to the court. Importantly, the stipulation acknowledged that the only issues to be resolved in the proceeding were the validity of the notices to preserve the mineral interests of the appellants and the constitutionality of the DMIA. Argument was heard on September 14, 2015 and on September 18, 2015, the Court ruled that the notices to preserve filed by appellants were void. The Court, further, terminated the appellants' dormant mineral interests and merged them into the appellees' surface estates.

[3] Md. Estates & Trusts Code Ann., § 1-301.

This appeal followed.

STANDARD OF REVIEW

The parties reached a comprehensive stipulation of factual statements. We therefore review the trial court's legal conclusions subject to a *de novo* standard of review. *Burson v. Capps*, 440 Md. 328, 342 (2014).

DISCUSSION

I. The Dormant Mineral Interests Act does not violate the Maryland Constitution or Declaration of Rights.

Appellants argue that "[t]he effect of the [Dormant Mineral Interests Act] is to retrospectively take a vested property interest from one person and transfer it to another." Thus, they contend, the statute violates Article III, Section 40 of the Maryland Constitution and Article 24 of the Maryland Declaration of Rights. Article III, Section 40 of the Maryland Constitution prohibits the General Assembly from enacting any law "authorizing private property to be taken for public use without just compensation." Article 24 of the Maryland Declaration of Rights provides "[t]hat no man ought to be…disseized of his freehold…or deprived of his…property, but by judgment of his peers or by the Law of the land." "Article 24 of the Maryland Declaration of Rights…and Article III, Section 40 of the Maryland Constitution…have been shown, through a long line of Maryland cases, to prohibit the retrospective reach of statutes that would result in the taking of vested property rights." *Harvey v. Sines*, 228 Md. App. 283, 293 (2016) (citing *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604 (2002)).

The Maryland Dormant Mineral Interests Act (the "DMIA"), enacted in 2010, provides that a cause of action may be maintained by a surface owner of real property to terminate a dormant mineral interest. A 'dormant interest' is defined as one that "is unused for a period of 20 or more years preceding the commencement of termination of the mineral interest." Md. Code Ann. Env. § 15-1203(a)(2)(i). The statute further provides that the mineral interest owner may record a notice of intention to preserve the mineral interest or part of a mineral interest at any time prior to the commencement of a termination action. Such recordation prevents the mineral interest from becoming 'dormant' and subject to merger.

The Maryland General Assembly patterned the DMIA after the Uniform Dormant Mineral Interests Act, which was designed "to enable and encourage marketability of real property and to mitigate the adverse effects of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property." Uniform Law Commission, *Uniform Dormant Mineral Interest Acts* §1(a). The stated purpose of Maryland's DMIA, in turn, "is to make uniform the law governing dormant mineral interests among the states." Env. § 15-1202(b).

The argument posed by appellants – that the DMIA violates Article III, Section 40 of the Maryland Constitution and Article 24 of the Maryland Declaration of Rights – was recently addressed and rejected by this court in *Harvey v. Sines*. *Harvey*, 228 Md. App. 283. In *Harvey*, as in the present case, surface owners filed a petition in the circuit court to terminate the mineral interests on their property, which had been dormant for at least 40 years. The mineral owners, whose one-half interests were affected, asserted that "the

statute was facially unconstitutional because it retrospectively abrogated vested rights." In upholding the constitutionality of the DMIA, we recognized that a severed mineral interest constitutes a property right, but, nevertheless, found that the DMIA does not retrospectively abrogate this right. *Harvey*, 228 Md. App. at 297 (citing *Muskin v. State Department of Assessments and Taxation*, 422 Md. 544, 560 (2011)).

We referenced *Muskin v. SDAT*, wherein, the Court of Appeals struck down a ground rent statute which automatically terminated the rights of land owners after a two-year grace period if they did not register with the Maryland State Department of Assessments and Taxation ("SDAT"). In considering whether the statute retrospectively abrogated vested rights, the Court evaluated whether "fair notice" was provided by the statute to the right holder, and the effect of the statute on the "reasonable reliance and settled expectations" of the right holder. *Muskin*, 422 Md. at 558 (quoting *John Deere*, 406 Md. 139, 148 (2008) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994))). The *Muskin* Court ultimately concluded that the ground rent statute provided reasonable fair notice, but impermissibly impacted the reasonable reliance and settled expectations of the ground rent owners. *Muskin*, 422 Md. at 558.

We distinguished the DMIA from the ground rent statute in *Muskin*, and held that the DMIA does not violate the owner's "fair notice, reasonable reliance, [or] settled expectations." First, the DMIA does not automatically terminate the ownership rights, but instead requires the surface owner to file a complaint to commence the process of terminating the interest. Second, the DMIA allows the owners of a mineral interest to record "at any time," thus giving the owners more than sufficient fair notice.

Moreover, we noted that the DMIA does not "impermissibly impac[t] the reasonable reliance and settled expectations" of the right holders. *Harvey*, 228 at 294. "The owners subject to the [DMIA], by their very definition as owners of *dormant* mineral interests," are not relying on rents or income from the property, as was the case in *Muskin*. *Harvey*, 228 at 295. "They have not made use of the interests for at least twenty years, and in this case well beyond 40 years." *Id.*

In *Harvey*, we also examined *Safe Deposit & Trust Co. v Marburg*, wherein, the Court of Appeals upheld a statute specifying that a ground rent owner's interest in their property would terminate, and would vest in fee simple in the tenant of the property through adverse possession, without compensation, if they failed to collect rent for twenty years. *Safe Deposit & Trust Co. v. Marburg*, 110 Md. 410 (1909). In upholding the constitutionality of the DMIA, we stated:

> "Similar to the provision found to be constitutional in *Marburg*, the Act here allows a person to, after twenty years of neglect, file a petition to, essentially, quiet title and allow the land and minerals beneath it to be put to beneficial use."

Harvey at 399.

Further, the DMIA

> "does not divest property from a private owner and transfer the property to the State. Instead, it allows a private party to maintain an action to clear title to disused property to allow the most productive use of the estate."

Harvey at 301.

As the present case is indistinguishable, in accordance with *Harvey v. Sines*, we hold that the DMIA is not violative of Article III, Section 40 of the Maryland Constitution or Article 24 of the Maryland Declaration of Rights.

II. A notice of intention to preserve a severed mineral interest is not effective if recorded by the owner of a dormant interest after an action to terminate the interest has been filed, even if the petition must be amended to name the owner as a respondent at a later time.

Appellants recorded their notices of intention to preserve after appellees had filed their action, but prior to the filing of the fourth amended complaint. They argue that their notices are effective because they were recorded before errors in the identification of appellants as the owners of the mineral interest were corrected. Specifically, appellants stated appellees incorrectly alleged that Edward C. Boyce, Kenneth Boyce, and Lester Boyce had died and named their unknown heirs. They also asserted appellees failed to name the Personal Representatives of Emma Englar Ellis and Helen L. Patchen Hafer, as required by statute, and instead named their descendants. Appellants contend that:

> "[u]nder the DMIA, the identity of the legal owner of the severed mineral interest is one of the essential elements that define the interest. In fact, the identity of the owner determines whether the interest can be terminated even if it is dormant."

According to them, in order to pursue a termination action of unknown or missing owners, appellees were required to identify the parties as unknown or missing. Because appellees elected to identify the mineral interest owners, appellants contend, the statute required them to do so correctly and any failure thereof prevented the action from commencing.

To the contrary, appellees argue, "that it is the commencement of a court action regarding the severed mineral interests, not the service of process upon any particular one

of multiple co-owners that is the triggering event that determines when a notice is 'late.'" "Moreover," appellees argue, "it is agreed that none of the [a]ppellants had any knowledge of the existence of the severed mineral interests or of their claim of right to a share of the subject mineral interests prior to the filing of the Petition for Termination in this action." "Accordingly, the three (3) [n]otices to [p] reserve were based upon, and in reaction to, the claims of [a]ppellees filed."

Section 15-1203(c)(1)(ii) of the DMIA states that "[r]ecordation of an instrument that creates, reserves, or otherwise evidences a claim to, or the continued existence of, the mineral interest" "shall constitute use of the entire mineral interest by that owner." If no such notice was recorded "during the period of 20 or more years preceding the commencement of termination of the mineral interest," Section 15-1203(b)(2) clearly provides that an "action [to terminate] may be maintained, whether or not the owner of the severed interest is an unknown or missing owner." Further, Section 15-1203(d)(3)(i)(4) provides the identity of the owner of the mineral interest is required only "if known."

In the present case, appellees made a diligent search to identify the current owners of the mineral interests, as evidenced by the hiring of a genealogical expert and the resultant study. They correctly identified all of the ownership interests — which had never had any active operations, had no recordation since Wright's conveyances in 1898, on which no taxes had been paid, and of which there were no judgments or decrees[4] — but admittedly there were some minor errors. For the Boyce brothers, their interests were identified but

[4] Md. Code Ann. Env. § 15-1203(c) (listing the actions that may be taken "by or under the authority of an owner of a mineral interest" that constitutes "use" of the mineral interests).

they were incorrectly presumed dead. For Ellis and Hafer, they were identified but their personal representatives were not named, as is required by the Estates and Trusts statute. Their ownership interests, therefore, were not excluded from the first petition, but rather incorrectly titled. These errors, which were subsequently corrected, were minor in nature and cannot be held to prevent an action from "commencing" under the statute.

Moreover, Rule 2-341 of the Maryland Rules, regarding amendment of pleadings, allows parties to, among other things, "correct a misnomer of a party," "correct misjoinder or nonjoinder of a party," "add a party or parties," and "make any other appropriate change." In fact, amendments shall be freely allowed when justice permits.

Under these circumstances, we find that appellants' late filings did not preserve their interests, because the action "commenced" when appellees filed their first Complaint.

We, therefore, affirm the judgment of the Circuit Court.

JUDGMENT FOR CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.