

Circuit Court for Garrett County
Case No. 11-C-15-013939

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2808

September Term, 2015

JESSIE LOUISE FRIEND, ET AL.

v.

SISLER LUMBER COMPANY, INC.

Woodward, C.J.
Kehoe,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, C.J.

Filed: April 23, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On February 19, 2015, appellee, Sisler Lumber Company, Inc., who owned the surface of a parcel of land, filed a Complaint to Quiet Mineral Title pursuant to the Maryland Dormant Mineral Interests Act (“DMIA”) in the Circuit Court for Garrett County against the mineral rights owners,¹ appellants. After a short trial on November 30, 2015, the court issued an order on February 10, 2016, terminating appellants’ mineral rights and vesting the mineral rights in appellee.

Appellants present the following questions for our review:

1. Does the [Dormant Mineral Interests Act (“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 personal representative of a deceased owner’s estate while an action to terminate the interest is pending against the decedent’s “unknown heirs” and descend[an]ts but not the personal representative of her estate?

While the instant appeal was pending, the Court of Appeals granted certiorari in *Ellis v. McKenzie*, 453 Md. 356 (2017). Upon consideration of appellants’ motion to stay filed on July 10, 2017, this Court stayed the instant appeal pending the resolution of *Ellis* on July 26, 2017.

On January 26, 2018, the Court of Appeals issued its opinion in *Ellis*, which addressed the following questions:

¹ Those individuals who were named in the petition and served were Jessie Louise Friend, Steven Friend, Linda Nugent, William F. Robinson, Sadie Flint, Ronald W. Friend, Donald Friend, the unknown heirs of Clara M. Friend, and the unknown heirs of Alfreda Friend.

1. Does the DMIA violate Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution by retrospectively taking a vested property interest from a mineral owner and transferring it to a surface owner without compensation?

2. Is a notice of intent to preserve a severed mineral interest effective if recorded by the personal representative of a deceased owner's estate while an action to terminate the interest is pending against the decedent's descendants but not against the personal representative?

457 Md. 323, 329 (2018) (internal quotation marks omitted).

The Court of Appeals held that DMIA does not violate the due process requirements under Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution. *Id.* at 341. The Court also held that DMIA did not permit unconstitutional takings in violation of Article III, § 40 of the Maryland Constitution. *See id.* at 341-42. Lastly, the Court held:

Under [the Environmental Article of the Maryland Code,] § 15–1203(a)(2) a mineral interest is dormant if two elements are met:

“(i) The mineral interest is unused for a period of 20 or more years preceding the *commencement* of termination of the mineral interest; and

“(ii) Notice of the mineral interest was not recorded during the period of 20 or more years preceding the *commencement* of termination of the mineral interest.”

(Emphasis added). Nothing in the Act alters the ordinary rule that the “commencement” of an action, here to terminate mineral rights, is the date of filing of the initial petition.

Id. at 344. Accordingly, the Court held that the appellants' notices to preserve their mineral interests were late, because the notices were filed after the commencement of proceedings by surface owners to terminate the mineral interests. *See id.*

After the release of *Ellis* and upon a motion to lift our previously imposed stay, this Court issued a show cause order on February 9, 2018, lifting the stay and ordering appellants to show cause “why the judgment of the Circuit Court for Garrett County . . . should not be affirmed in light of” *Ellis*. Appellants failed to respond to the show cause order. It is this Court’s opinion that *Ellis* is dispositive of the instant appeal, and thus we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR GARRETT COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.**