

SUPREME COURT OF OHIO

State ex rel. Kerns v. Simmers, 153 Ohio St. 3d 103, 2018-Ohio-256

101 N.E.3d 430 (Ohio 2018) · Decided January 16, 2018

SUMMARY

Landowners sought a writ of mandamus compelling Ohio officials to commence appropriation proceedings for property included in an oil-and-gas drilling unit. The Ohio Supreme Court denied the writ, holding that the landowners had an adequate remedy through an appeal to the Franklin County Court of Common Pleas under R.C. 1509.37, despite their failure to timely pursue that appeal.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	DeWine, J.; O'Connor, C.J.; O'Donnell, J.; French, J.; O'Neill, J.; Fischer, J.; Kennedy, J.
JURISDICTION	Ohio
DECIDED	January 16, 2018
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Original action in mandamus seeking to compel the Ohio Department of Natural Resources and its chief to commence appropriation proceedings for alleged takings arising from an oil-and-gas unitization order.
STANDARD OF REVIEW	Mandamus requires proof of a clear legal right, a clear legal duty, and the absence of a plain and adequate remedy at law. The adequacy of the statutory appeal was evaluated under the requirement that the remedy be complete, beneficial, and speedy.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential.
PARTIES	Landowners v. Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, Richard Simmers

TOPICS

administrative law judicial review of agency action remedies appellate procedure takings clause

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the landowners were entitled to a writ of mandamus compelling commencement of appropriation proceedings for an alleged unconstitutional taking.
2. Whether an appeal to the Franklin County Court of Common Pleas under R.C. 1509.37 constituted a plain and adequate remedy at law.
3. Whether the landowners' failure to timely pursue the statutory appeal rendered that remedy inadequate.

HOLDINGS

1. An appeal under R.C. 1509.37 was a complete, beneficial, and speedy remedy because the common pleas court could review the unitization order for lawfulness and reasonableness and invalidate it if the order or R.C. 1509.28 violated constitutional requirements.
2. A party's failure to timely pursue an otherwise adequate appellate remedy does not make that remedy inadequate for purposes of mandamus.
3. Mandamus does not lie because the landowners failed to establish the absence of a plain and adequate legal remedy.

KEY QUOTATIONS

“To be entitled to a writ of mandamus, the landowners need to show (1) that they have a clear legal right to appropriation proceedings, (2) that respondents have a clear legal duty to commence the proceedings, and (3) that the landowners have no plain and adequate legal remedy.” (at 432)

“If that were the case, this criterion for a writ of mandamus would be met whenever the opportunity to pursue another adequate remedy expired. Would-be appellants could thwart the appellate process simply by ignoring it.” (at 434)

“Where a constitutional process of appeal has been legislatively provided, the sole fact that pursuing such process would encompass more delay and inconvenience than seeking a writ of mandamus is insufficient to prevent the process from constituting a plain and adequate remedy in the ordinary course of the law.” (at 435)

FACTUAL BACKGROUND

Chesapeake Exploration sought an order under R.C. 1509.28 to unitize approximately 593 acres over a common oil-and-gas reservoir for horizontal drilling and hydraulic fracturing. The landowners, whose property comprised approximately 120 acres of the proposed unit, objected and alleged that the unitization would take their property without compensation. The chief issued the unitization order and allocated royalty payments and net production proceeds to the landowners. After the Ohio Oil and Gas Commission dismissed their administrative appeal, the landowners sought mandamus to compel appropriation proceedings.

PROCEDURAL HISTORY

The chief of the Division of Oil and Gas Resources Management issued a unitization order under R.C. 1509.28. The landowners appealed to the Ohio Oil and Gas Commission, which dismissed the appeal for lack of jurisdiction to decide the constitutional issues. Instead of appealing that dismissal to the Franklin County Court of Common Pleas under R.C. 1509.37, the landowners filed an original mandamus action in the Supreme Court of Ohio. The Supreme Court denied the writ because the statutory appeal provided an adequate remedy at law.

DISPOSITION

writ_denied

CASES CITED

- Amoco Prod. Co. v. Heimann, 904 F.2d 1405, 1410-1411 (10th Cir. 1990)
- State ex rel. Berger v. McMonagle, 6 Ohio St. 3d 28, 29, 451 N.E.2d 225 (1983)
- Shelby v. Hoffman, 7 Ohio St. 450, 455 (1857)
- Ex parte Rowland, 104 U.S. 604, 617, 26 L. Ed. 861 (1881)
- State ex rel. Cartmell v. Dorrian, 11 Ohio St. 3d 177, 178, 464 N.E.2d 556 (1984)
- State ex rel. Natl. Elec. Contrs. Assn., Ohio Conference v. Ohio Bur. of Emp. Servs., 83 Ohio St. 3d 179, 183, 699 N.E.2d 64 (1998)
- State ex rel. Arnett v. Winemiller, 80 Ohio St. 3d 255, 259, 685 N.E.2d 1219 (1997)
- State ex rel. Shemo v. Mayfield Hts., 93 Ohio St. 3d 1, 5, 752 N.E.2d 854 (2001)
- State ex rel. Willis v. Sheboy, 6 Ohio St. 3d 167, 451 N.E.2d 1200 (1983)