



✚ EOG Res., Inc. v. Lucky Land Mgmt., LLC, No. 24-3211, 2024 BL 218878
(6th Cir. June 26, 2024), Court Opinion

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Majority Opinion >

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EOG RESOURCES, INC., Plaintiff-Appellee, v. LUCKY LAND MANAGEMENT, LLC, Defendant-Appellant.

No. 24-3211

June 26, 2024, Filed

For EOG RESOURCES, INC., Plaintiff - Appellee: Robert J. Karl, Christopher J. Baronzzi, Kyle Chandler Gilliam, Porter, Wright, Morris & Arthur, Columbus, OH.

For LUCKY LAND MANAGEMENT, LLC, Defendant - Appellant: Daniel Patrick Corcoran, Theisen Brock, Marietta, OH.

Before: GRIFFIN, KETHLEDGE, and NALBANDIAN, Circuit Judges.

ORDER

Defendant Lucky Land Management, LLC ("Lucky") appeals a district-court order granting a preliminary injunction to Plaintiff EOG Resources, Inc. allowing EOG to proceed with construction of two horizontal well pads on the surface of property to which Lucky owns the surface rights and EOG owns the mineral rights. Lucky moves to stay the injunction pending appeal and asks that we waive the posting of bond. EOG opposes a stay.

We consider four factors when determining whether to grant a stay pending appeal: (1) whether the movant has demonstrated a strong likelihood of success on the merits, (2) whether the movant will be irreparably injured absent a stay, (3) whether a stay will substantially injure other interested parties, and (4) the public interest. *Kentucky v. Biden*, 23 F.4th 585 , 593 (6th Cir. 2022). "Our review of the district court's decision to

issue a preliminary injunction is highly deferential," and the injunction will not be overturned "unless the district court relied upon clearly erroneous findings of fact, improperly applied the governing law, or used an erroneous legal standard." *Dahl v. Bd. of Trs. of W. Mich. Univ.*, 15 F.4th 728 , 731 (6th Cir. 2021) (per curiam) (order) (cleaned up).

Lucky argues that "well-recognized law and the plain language of the Severance Deeds" show that EOG does not have the right to use the surface of Lucky's property to extract oil and gas from other properties. It also argues that the district court erred by analyzing whether EOG exhibited "due regard" for Lucky's surface rights without first finding that EOG had an implied right to use the surface for its intended purpose.

The district court correctly noted that none of the cases Lucky relied on below was binding and that there is no analogous case law in this circuit. But the district court abandoned the analysis of whether EOG had an implied right to use the surface as intended and relied on *Snyder v. Ohio Department of Natural Resources*, 140 Ohio St. 3d 322 , 2014- Ohio 3942 , 18 N.E.3d 416 (Ohio 2014), to determine whether EOG had exercised "due regard" for Lucky's use of the surface. Although *Snyder* addresses whether strip mining for subjacent minerals constitutes a reasonable use of the surface by the mineral owner, *id.* at 420-21 , it is silent as to whether the mineral owner can use the surface of one property to mine minerals from adjacent properties, and there is a wealth of persuasive authority addressing that very issue, including from other states in this circuit, *see, e.g., Wiser Oil Co. v. Conley*, 346 S.W.2d 718 , 722 (Ky. 1960) ("It is well settled in Kentucky, as elsewhere, that in the absence of an express agreement, the mineral owners or lessees cannot use the surface for the production of minerals [*2] from other lands."); *Russell v. Texas Co.*, 238 F.2d 636 (9th Cir. 1956) ("It is a well established principle of property law that the right to use the surface of land as an incident of the ownership of mineral rights in the land, does not carry with it the right to use the surface in aid of . . . drilling operations on other lands."). Thus, at this juncture, Lucky has shown a likelihood of success on appeal. *See Dahl*, 15 F.4th at 731 (noting that the district court abuses its discretion if it incorrectly applies the governing law or relies on an incorrect legal standard).

Lucky's argument that it faces irreparable harm is a closer call. While other courts have found tree clearing to constitute irreparable harm, *see, e.g., Comm. of 100 on Fed. City v. Foxx*, 87 F. Supp. 3d 191 , 204-05 (D.D.C. 2015) (collecting cases), that harm has already occurred here. This may be evidence that the district court improperly weighed the balance of harms below, but it is not sufficient to establish irreparable harm at this stage. Nevertheless, the district court stated below that the record supported a finding that "Lucky's use of the surface as a hunting ground would be disrupted by EOG's planned development," and an expert testified that the construction would cause some of the deer population to abandon the area. R. 41, PageID 1572; *see Env't Def. Fund v. Tenn. Valley Auth.*, 468 F.2d 1164 , 1183 (6th Cir. 1972) (finding irreparable harm from construction based on its significant impact on "the natural environment"). Therefore, this factor weighs slightly in Lucky's favor.

The district court concluded below that EOG's claims of delays and lost profits were merely monetary or economic, and thus "EOG has a difficult time establishing that it would be irreparably harmed without an injunction." *Id.* at PageID 1571. Lucky relies on this finding to argue that there is no irreparable injury to EOG if this court stays the injunction. EOG argues that any delay in drilling will also delay royalty payments to lessors who have an interest in the wells. While that may be true, if EOG does not have the right to drill horizontal wells

on the surface of Lucky's property, the damage from any further construction outweighs any delayed oil and gas royalties to lessors.

Neither of the parties presents a particularly compelling argument as to the public interest. Lucky contends, without support or explication, that "[b]ecause of what is at stake, and because of the novelty of the legal issues presented, the public interest would be served by granting a stay." EOG relies on its unsuccessful argument below that the public interest is served by enforcing contracts. But, as the district court concluded, EOG's right to drill horizontal wells is not expressly conveyed in the Severance Deeds, so it is not clear that allowing that activity is within the scope of the contract at issue. Therefore, this factor is neutral as to a stay.

Finally, Lucky asks us to waive the filing of bond pending appeal. The Federal Rules of Appellate Procedure provide only that we "may" condition a stay upon "a party's filing a bond or other security in the district court." Fed. R. App. P. 8(a)(2)(E) . However, we decline to exercise our discretion to do so here. **[*3]**

Although it is a close call, because Lucky has established a likelihood of success on the merits and irreparable harm, and given the balance of the harms, the motion to stay the injunction and waive bond is **GRANTED**.