

DA 20-0492

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 271N

SCOTT AND PAMELA BYE; KOREY AND WENDY FAUQUE;
BUTCH AND DOREEN GILLESPIE; WAYNE AND ROXY
GILLESPIE, and JOHN DOES 1, 2, 3, 4,

Plaintiffs and Appellees,

v.

SOMONT OIL COMPANY, INC.,

Defendant and Appellant.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Toole, Cause No. DV-20-018
Honorable Kaydee Snipes Ruiz, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Gregory J. Hatley, Davis, Hatley, Haffeman & Tighe, P.C., Great Falls,
Montana

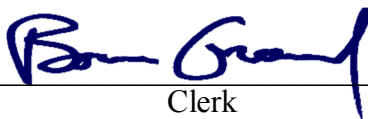
For Appellees:

Hertha L. Lund, Christopher T. Scoones, Ben F. Stormes, III, Lund Law,
PLLC, Bozeman, Montana

Submitted on Briefs: August 18, 2021

Decided: October 19, 2021

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Somont Oil Company, Inc., appeals a preliminary injunction granted by the Ninth Judicial District Court in favor of Scott and Pamela Bye, Korey and Wendy Fauque, Butch and Doreen Gillespie, and Wayne and Roxy Gillespie. We reverse and remand for the District Court to enter findings of fact and conclusions of law.

¶3 Somont Oil Company, Inc., ("Somont") operates oil and gas well sites on Montana lands in which it owns or leases mineral rights. The Plaintiffs and Appellees (collectively, "the Landowners") own surface rights on land where Somont operates a portion of its oil and gas developments. Many of the Landowners run cattle operations on their lands. Somont historically has fenced some of its well sites and evaporation pits, including many of those located on the Landowners' properties.

¶4 In July 2019, a Toole County jury found Somont strictly liable in another case for failing to maintain a legal fence under § 81-4-103, MCA, after cattle were injured or died from drinking oil-contaminated water. *Stene v. Somont*, No. DV-16-137, (Mont. Ninth Judicial Dist.). Following the *Stene* judgment, Somont notified the Landowners that it would no longer fence its water evaporation pits. Somont explained in a letter that it

understood, based on the *Stene* verdict, that fencing the water evaporation pits would expose it to strict liability under § 81-4-103, MCA, and advised them that it would be removing all fencing surrounding its evaporation pits. Somont offered to gift the fencing to the Landowners, provided they assumed liability for the fencing.

¶5 After receiving Somont’s letter, the Landowners filed suit, seeking a preliminary injunction under § 27-19-201, MCA, to enjoin Somont from removing the existing fencing around its oil operations and evaporation pits. At the show cause hearing, two of the Landowners, Wayne Gillespie and Scott Bye, testified about the condition of Somont’s fencing and the livestock losses Mr. Gillespie experienced. Charles Janske, Somont’s agent, testified about Somont’s current fencing practices and his understanding of Somont’s liability following *Stene*. The District Court granted the Landowners’ request for a preliminary injunction pursuant to § 27-19-201(1)-(3), MCA, after finding that “based [on the] parties’ briefing and evidence and testimony during the hearing, . . . granting the requested preliminary injunction [is] proper.” The court additionally found that “[t]he balance of hardships, . . . irreparable injury[,] and probability of victory after trial” supported the injunction. It made no other findings of fact. The order, issued September 14, 2020, enjoined Somont “from removing any fencing” on the Landowners’ land and required that Somont “maintain all existing fencing . . . pending final judgment after trial.” Somont appeals.

¶6 We review the grant or denial of a preliminary injunction for a manifest abuse of discretion. *BAM Ventures, LLC v. Schifferman*, 2019 MT 67, ¶ 7, 395 Mont. 160,

437 P.3d 142. “A manifest abuse of discretion is one that is obvious, evident, or unmistakable.” *BAM Ventures, LLC*, ¶ 7 (citation and quotation omitted). “In determining the merits of a preliminary injunction, it is not the province of either the District Court or this Court on appeal to determine final[] matters that may arise upon a trial on the merits.” *Caldwell v. Sabo*, 2013 MT 240, ¶ 19, 371 Mont. 328, 308 P.3d 81 (citations and quotations omitted).

¶7 By statute, a party may obtain a preliminary injunction by establishing one of five sets of criteria. Section 27-19-201, MCA. The subsections of the statute are disjunctive—a district court need find only one subsection’s criteria to issue a preliminary injunction. *BAM Ventures, LLC*, ¶ 14. In seeking a preliminary injunction, a party must only “establish a prima facie case, not entitlement to final judgment.” *Weems v. State*, 2019 MT 98, ¶ 18, 395 Mont. 350, 440 P.3d 4 (citing *City of Whitefish v. Bd. of Cty. Comm’rs of Flathead Cty.*, 2008 MT 436, ¶ 25, 347 Mont. 490, 119 P.3d 201). The District Court found that the Landowners met the first three subsections of the statute, which provide for a preliminary injunction:

- (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
- (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant; [or]
- (3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some

act in violation of the applicant’s rights, respecting the subject of the action, and tending to render the judgment ineffectual[.]

Section 27-19-201(1)-(3), MCA.¹ A preliminary injunction is proper for “the limited purpose” of “preserv[ing] the status quo and minimiz[ing] harm to all parties” *Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, 405 P.3d 73.

¶8 A district court must “set forth its reasoning for issuing [a preliminary] injunction with sufficient clarity to allow informed appellate review.” *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶ 28, 319 Mont. 132, 82 P.2d 912. Rule 52(a), M. R. Civ. P., requires the court to set forth the findings of fact and the conclusions of law supporting its issuance of an interlocutory injunction. Although “the extent of such findings and conclusions is necessarily dependent on the facts and circumstances of each case . . . the litmus test in such cases is whether the District Court’s order sets forth its reasoning in a manner sufficient to allow informed appellate review.” *Lake v. Lake Cty.*, 233 Mont. 126, 134, 759 P.2d 161, 165 (1988) (citation omitted).

¶9 Somont argues that the District Court erred in granting a preliminary injunction because the Landowners failed to make the requisite showing under § 27-19-201(1)-(3), MCA, demonstrating that it appeared they were entitled to relief. Somont argues further that the District Court failed to set forth sufficient findings of fact

¹ Although the District Court found explicitly that the Landowners satisfied the requirements of subsections (2) and (3), the court cited to all three subsections in its discussion of “Applicable Law.” The court implicitly referred to subsection (1) by discussing the “probability of victory after trial” and the need for the Landowners to establish a “prima facie case.” Accordingly, we will discuss all three subsections.

and conclusions of law to support the District Court's reasoning for granting the preliminary injunction under § 27-19-201(1)-(3), MCA.

¶10 We will affirm the preliminary injunction if the record shows that the Landowners demonstrated a prima facie case: (1) that they will suffer some degree of harm and are entitled to relief (§ 27-19-201(1), MCA); (2) that they will suffer an “irreparable injury” by the removal of the fencing (§ 27-19-201(2), MCA); or (3) that Somont's removal of the fencing would tend to “violat[e]” the Landowners' rights “render[ing] the judgment ineffectual” (§ 27-19-201(3), MCA). We address each subsection in turn.

¶11 Under § 27-19-201(1), MCA, for a preliminary injunction to issue, an applicant must tend to show that it has a legitimate cause of action on which it appears likely to succeed and that an injunction is an appropriate remedy. *Sandrock v. DeTienne*, 2010 MT 237, ¶ 16, 358 Mont. 175, 243 P.3d 1123. Injunctive relief under subsection (1) is appropriate when “it appears an applicant has established entitlement to relief under a legal claim that consists of ‘restraining the commission or continuance of [an] act,’” as the injunctive relief can “stop the continuing illegal act, as well as the harm that is implicitly being done thereby.” *BAM Ventures, LLC*, ¶ 16 (quoting § 27-19-201(1), MCA). To demonstrate this, a party must make out a prima facie case that it is entitled to relief. *See Weems*, ¶ 18 (discussing a preliminary injunction sought for a constitutional challenge). *See also Wells v. Young*, 2002 MT 102, ¶ 17, 309 Mont. 419, 47 P.3d 809 (explaining that permanent injunctive relief requires a district court to find “a breach of an obligation by the party sought to be enjoined”). “‘Prima facie’ means literally ‘at first sight’ or ‘on first

appearance but subject to further evidence or information.’” *Weems*, ¶ 18 (citing *Black’s Law Dictionary* (10th ed. 2014)).

¶12 Injunctive relief under subsection (3) requires a similar finding that it appears “a continuing or threatened act would violate ‘the applicant’s rights’ and tend to render the ‘judgment ineffectual.’” *BAM Ventures, LLC*, ¶ 16 (quoting § 27-19-201(3), MCA). A party is entitled to injunctive relief under subsection (3) only if it has established a prima facie showing that the complained-of act violates a recognized legal right and demonstrated that injunctive relief is the proper remedy. *City of Billings v. Cty. Water Dist. of Billings Heights*, 281 Mont. 219, 226-27, 935 P.2d 246, 250-51 (1997); *Davis*, ¶ 25.

¶13 For injunctive relief under subsections (1) and (3), the statute required the District Court to find that the Landowners made a prima facie showing that Somont had a duty to maintain the existing fencing, it appeared the Landowners had a right to the fencing, and that an injunction is the proper remedy. Prior to the hearing, both parties briefed the issue of duty extensively. The Landowners argued that Somont owed them a duty to maintain the existing fencing under common law, statute, and regulations. The Landowners further argued that a preliminary injunction was appropriate in order to “preserve the status quo.” Somont disagreed with both arguments, asserting that a preliminary injunction was inappropriate and that neither the judgment in *Stene* nor any common law, statute, or regulation imposed a duty on Somont to maintain the fencing.

¶14 At the preliminary injunction hearing, the District Court heard testimony from Landowners Wayne Gillespie and Scott Bye regarding the condition of the fences

enclosing Somont's oil and gas developments and the previous livestock losses due to a lack of or inadequate fencing. Mr. Gillespie testified about a specific incident where a calf had drowned in one of Somont's evaporation pits after the calf went through a loose fence and fell through the ice. Somont's agent, Charles Janske, testified as well, discussing his understanding of Somont's liability for its fencing following *Stene*, Somont's current fencing practices, and the rarity of incidents leading to death or injury of cattle from Somont operations.

¶15 The District Court stated that its "interpretation of the outcome of the *Stene* case [is] that if a fence is constructed by Somont, it is then Somont's obligation to maintain the fence" under § 81-4-101, MCA, and that Somont is strictly liable "for any damages to the [Landowners'] livestock." The District Court set forth no conclusions of law explaining its determination that *Stene* imposed a legal obligation on Somont to maintain its fencing or that it appeared that the Landowners have a right to the fencing. Regarding the appropriateness of issuing an injunction, the District Court explained that given "[t]he balance of hardships, as well as irreparable injury and probability of victory after trial, the evidence presented supports a temporary injunction prohibiting the removal of the fences before a final judgment is reached." The court did not discuss how it balanced each party's hardships or how it determined the appropriateness of an injunction under the facts presented.

¶16 To grant a preliminary injunction under subsection (2), the District Court needed to find that it appeared that the Landowners faced a "great or irreparable injury." Further,

under subsections (1) and (3), the Landowners needed to show they tended to face a “threatened harm or injury.” *BAM Ventures, LLC*, ¶ 16. Although subsection (2) sets out a specific standard for threatened harm or injury—“great or irreparable injury”—a lesser degree of harm is implied in the other subsections of § 27-19-201, MCA. *BAM Ventures, LLC*, ¶ 16.

¶17 A claim for money damages does not satisfy the threatened harm required under any of the first three subsections of § 27-19-201, MCA, “because money damages may be recovered in an action at law without resort to equity.” *BAM Ventures, LLC*, ¶ 17 (*quoting Caldwell*, ¶ 29). In their complaint, the Landowners sought to prevent “damage [to their livestock]” that could result from Somont removing its fencing and requested money damages. At the preliminary injunction hearing, Mr. Gillespie testified about cattle dying in Somont’s oil well sites due to inadequate fencing. Mr. Bye testified, however, that he had not lost any cattle due to Somont’s fencing. Similarly, Mr. Janske testified that he was aware of only one livestock death involving the Landowners—the calf owned by Mr. Gillespie that fell through the ice—and none involving any livestock owned by the other Landowners. Mr. Janske attested that, during more than sixty years of Somont operations, there had never been an incident even closely similar to what occurred in the *Stene* case. The District Court found that the Landowners had “produced evidence representing . . . that removal of the fencing, not only would inherently seem to go against the Order of a previous court in the *Stene* case, but further *could* have a good probability of causing even more problems, or irreparable harm to [the Landowners]” (emphasis in

original). The court did not explain by reference to the conflicting testimony in the preliminary injunction record what injury removal of the fencing was likely to cause or what irreparable harm likely would result that could not be redressed in an action at law.

¶18 Upon review of the record and the parties' arguments, we have determined that the absence of findings of fact and conclusions of law makes it impossible to evaluate how the District Court appraised the Landowners' and Somont's legal theories or how it balanced the interests of the parties, including the hardship Somont might face and any irreparable injury to the Landowners. Without proper findings of fact and conclusions of law, this Court lacks an adequate basis on which to review the District Court's reasoning. As such, we are unable to determine whether the District Court abused its discretion in granting the Landowners' motion for preliminary injunction under subsections (1)-(3) of § 27-19-202, MCA.

¶19 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. Although the Landowners make a strong argument for preserving the status quo, without sufficient findings of fact and conclusions of law, this Court cannot review whether or on what basis the District Court determined the Landowners made out a prima facie case that they were entitled to relief under § 27-19-202(1)-(3), MCA. We reverse and remand for the District Court to issue findings of fact and conclusions of law supporting its issuance of the preliminary injunction.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE