

Eastland Court of Appeals Rules Oil Company Not Liable for Dead Cows

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When over 100 cattle died after exposure from oil and saltwater from oil and gas operations, their owner sued the oil company. The Eastland Court of Appeals affirmed a take nothing judgment and dismissal in [Foote v. Texcel Exploration, Inc.](#)



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Background

Mr. Foote leased property in Knox County, Texas on which he grazed 650 head of cows. He hired Mr. Cypert to care for the cattle on the lease. Foote traveled to Knox County, met with Cypert, and went to look at Cypert's facilities and operations. Foote did not go see the pasture he leased prior to sending the cattle.

Texcel leased the mineral rights to some portion of the leased property. The mineral lease did not require Texcel to fence off its portion of the property or equipment.

Mr. Decker is the pumper for Texcel on this lease. He checked the lease every day around 8:00 am. The landowner notified Decker before the cattle were turned out on the lease, and Decker notified Texcel's owner. Texcel's owner instructed Decker to contact the electrician to ensure the electric fence around the tank battery and wellsite on the lease was working.

Decker testified that as soon as the cattle were turned out on the lease, they began to knock down the fence and get inside the operations area by the tank battery. Decker called the Texcel's owner who told Decker to have the fence repaired. The electrician came to see if the fence was still hot, but Decker testified cattle continued to get inside the fenced area. Decker testified that he would "shoo" the cattle out, repair the fence, and ensure the wire was hot before leaving.

Decker testified he told Cypert's employee that the cattle were tearing the fence down every day. Cypert testified that he never saw the cows in the area around the tank battery, and that Decker never told him about them tearing down the fence. However, Cypert did testify that the cattle had knocked down the fence on a couple of occasions when Cypert had to set it back up and make adjustments.

About a month into the grazing lease, numerous cattle were injured and many died. That morning, Decker arrived at 8:00 to check the equipment. He testified when he left the location, the fence was up and hot. That afternoon, when Cypert checked on the cattle, he found oil and saltwater on the cows, in the tank battery area, and in the pasture. Apparently, sometime during the day, the cattle pushed through the fence and broke a PVC pipe on a holding tank, causing a spill of oil and saltwater. As a result, 132 head of cattle died.

After the accident, Texcel's owner remediated the spill and notified the Railroad Commission that he planned to have a new fence built around the battery. Before Texcel could do so, Cypert had a barbed wire fence built. He sought reimbursement for this expense from Texcel, but Texcel refused.

Trial

Foote and Cypert filed suit against Texcel and Decker. Foote sought damage for the value of the 132 dead cows, veterinary bills, special feed costs, shipping cost to relocate cattle, and lost profits from the surviving cattle being sold under expected weight. Cypert sought reimbursement for the cost of the barbed wire fence.

A jury trial was held. The jury found in favor of Texcel and Decker, issuing a take-nothing verdict.

Foote and Cypert filed a motion for new trial when it came out that one of the jurors withheld information during voir dire about a prior “physical alteration” between Cypert and her husband. The motion for new trial on these grounds was overruled.

Foote and Cypert (“Appellants”) filed this appeal.

Basic Premises Liability Law

In a premises liability case, the duty of an owner or occupier of land owes to a person injured on the property depends on the injured person’s status as either an invitee, licensee, or trespasser.

Appellate Decision

The Eastland Court of Appeals affirmed.

The court first noted that the applicable law in cases involving cattle injured by and oil or gas operation is well-established in Texas. “The owner/lessee of the surface estate in order to recover against the mineral lessee or operator for injury to his cattle must plead, prove, and obtain a jury finding on one of the following: (1) the lessee/operator intentionally, willfully, or wantonly injured the cattle, or (2) the lessee/operator used more of the land than was reasonably necessary for carrying out the purposes of his lease and that as a result of some negligent act or omission on his part, he proximately caused an injury to the surface owner/lessee’s cattle.”

The court noted that Appellants did not seek or obtain jury findings on either of these two viable theories of liability.

Premises Liability Theory

Instead of seeking recovery on the theories above, Appellants sought to expand the law by asserting that a premises liability claim should be allowed. This request “to expand the law is unwarranted,” the court ruled.

Invitee Status

Appellants claim that because Foote had the grazing lease, his status as an invitee should be extended to his cattle for the entire area, including the area where Texcel was conducting its operations. Further, they argued, the saltwater spilled beyond the fenced-in tank battery area into the wheat pasture which Foote leased. Based on this, Appellants argued that the cattle were invitees as a matter of law.

The appellate court disagreed, finding the cattle were not invitees in the area where oil and gas operations were conducted. They noted that Appellants cited no cases categorizing livestock as “persons” in the context of a premises liability case. Further, in the absence of a lease provision to the contrary, the court held that the only duty an oil and gas operator owes to a surface grazing tenant is not to intentionally, willfully, or wantonly injure the cattle. Based on this, the court held that cattle were more properly treated as trespassers, as the duty owed to a trespassing person under the premises liability framework is to refrain from injuring someone willfully, wantonly, or by grossly negligent conduct. The court held that the cattle were, if anything, trespassers. Because there was no evidence of any willful, wanton, or intentional conduct, Texcel did not violate its duty.

Escaped Saltwater

As to the argument that some of the saltwater escaped the fenced-in operations area, the court noted that Texas law is clear that an operator has no duty to fence or otherwise prevent livestock from entering the premises of a mineral lease. Further, it was the cattle invading the operations area that caused the leak.

Negligence & Unreasonable Use

Texas law allows a cause of action for the owner or lessee of the surface when the action of an operator negligently allows a dangerous substance to invade the surface owner’s land—exceeding the operator’s allowed “reasonable use.” The court notes that these types of cases are characterized as injury-to-land rather than injury-to-

cattle. However, Appellants did not prove or prove that Texcel's use of the surface was more than reasonably necessary for their operation.

Negligent Undertaking

Next, the Appellants argue a claim of negligent undertaking, particularly that Texcel's fence was inadequately built and maintained, resulting in harm to the cattle by letting them enter the operations area. Appellants essentially argue that because Texcel built and maintained the fence, that created a duty for them to do so in a particular manner.

The court rejected this claim based on well-settled Texas law that an oil and gas operator has no duty to fence off the area of operations to keep livestock out. Further, the fact that an operator chooses to build a fence does not create any duty or obligation to fence off the operations area. Finally, it was not the fence itself that caused harm to the cattle. Thus, this issue was overruled.

Jury Misconduct

Appellants argued the trial court erred in denying their motion for new trial based on juror misconduct. In order to warrant a new trial for jury misconduct, the movant must prove: (1) misconduct occurred; (2) it was material and (3) it probably caused injury.

The court noted that although Appellants claimed juror misconduct because the juror failed to disclose her husband had a physical altercation with Cypert, they did not prove or allege that the juror knew Cypert or was aware of the altercation. They failed to provide any affidavit from the juror or Cypert regarding the situation or the juror's knowledge thereof. Further, the attorneys did not ask the jurors whether they or their family had been in any altercations with Cypert.

Even if the court were to find the failure to disclose was misconduct, there was no evidence that the Appellants probably suffered injury from it. The jury's verdict was unanimous, there was no evidence that her misconduct affected the outcome in any way. Further, because the court determined as a matter of law the cattle were not licensees, but trespassers, there was no way for the Appellants to show injury from the juror.

Additional Issues

There were a number of additional issues overruled by that court that are not included in this post but are discussed in the full opinion.

Thus, the take nothing judgment was affirmed, and the case was dismissed.

Key Takeaways

First, this case is a good reminder about the lack of responsibility for oil and gas operators to fence operations areas to keep livestock out. When placing livestock on land with active oil and gas operations, the livestock owner should carefully inspect the fences and understand there is no obligation on the company to fence the livestock out. The one exception to this rule is that if the mineral lease required such fencing, then this obligation would be placed on the operator. This is a critical reminder to carefully negotiate oil and gas leases to protect any surface activities.

Second, the circumstances where a livestock owner may recover from an oil and gas company for injuries to or death of cattle are extremely limited. As noted above, only in two situations—proving willful, wanton, or intentional actions or showing more than reasonable use of the property due to a negligent action—is recovery permitted. These requirements make a successful suit difficult.

Third, this case indicates that Texas courts will not confer premises liability status on livestock.

Finally, for anyone leasing land and hiring a third party to care for livestock, it is critical to carefully inspect all land and carefully vet the selected caretaker. It is not uncommon to see issues arise in these types of agreements for livestock care.