PA Superior Court Makes Operators Dig Deeper for Implied Surface Access in Pennesi v. DL Resources

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Does the lessee of a severed oil and gas interest have an implied right to the reasonable use of the surface estate to develop the oil and gas? Prior Pennsylvania jurisprudence might have led you to conclude the answer is yes. However, in its July 1, 2026 decision, the Pennsylvania Superior Court held that a showing of **strict necessity** is required for the creation of such an implied easement. Only once strict necessity is proven is the question of reasonable use relevant.[1]

Pennesi v. DL Resources arose from a complicated chain of title involving a 54-acre tract in Unity Township, Westmoreland County, Pennsylvania. The oil and gas rights to the 54-acre tract were leased to W.H. Haupt Company in 1959. Following a series of subdividing out sales, as of 2023, John Zominsky, his heirs and assigns owned most of the surface and minerals, however approximately 13.58 acres of the surface estate was owned by Pennesi and Mazzoni.[2] DL Resources succeeded to W.H. Haupt's interest as lessee and drilled three conventional gas wells in 2006, including the William Wells well 2 on the Pennesi land.[3] DL Resources maintained a wellhead and related production infrastructure on the tract, including on the Pennesi land (roadways, gathering pipelines, and brine tanks) related to this well, which overlain Zominsky et al.'s severed mineral estate.[4]

DL obtained a new lease of the Zominski interests on March 1, 2023, and subsequently surrendered its rights in the 1959 lease, meaning that lease was no longer in effect.[5] However, DL continued operating under the 2023 lease; Pennesi is not a party to the 2023 lease.[6] Nevertheless, DL continued utilizing the surface of the Pennesi land under an implied easement theory because its 2023 lease was granted by the owners of the severed mineral interest underlying the Pennesi land.[7]

Pennesi and Mazzoni sued DL Resources in 2023 seeking an injunction to prevent DL's continued access.[8] Pennesi and Mazzoni argued DL had no express right of surface access and no implied right because it was not strictly necessary for DL to utilize it; there were other means.[9] DL Resources argued it had the implied right to continued use because it was the most cost-effective method for access and therefore reasonable.[10] Both parties moved for summary judgment.[11]

The Court of Common Pleas of Westmoreland County granted summary judgment for DL Resources, finding that Pennsylvania law provided a subsurface oil and gas owner with the implied right to enter the surface and open a well and therefore holding that the only meaningful limitation on DL Resources' surface use was whether that use was reasonable.[12] The trial court rejected Pennesi's strict-necessity argument, concluding it would be inconsistent with the decisions in *Belden & Blake Corp. v. Commonwealth, Department of Conservation and Natural Resources*, 600 Pa. 559 (2009), which emphasized the reasonableness of the subsurface owner's exercise of surface rights.[13]

On appeal, however, the Pennsylvania Superior Court disagreed, holding that the right to use a surface estate without an express easement is not unqualified. The Superior Court distinguished between the existence of an implied surface-access right and the permissible exercise of that right. With regard to former, the Superior Court held that the right to implied surface access only existed where the use was strictly necessary.[14] Once strict necessity is established and the implied right exists, the question/standard of reasonable use becomes relevant. The court therefore treated reasonableness as a limitation on the exercise of an established right, with strict necessity as the test for whether the implied easement exists in the first place.

On the facts before it, the Superior Court could not make the determination of whether strict necessity was established because there remained a genuine issue of fact as to whether DL Resources' continued use of the Pennesi property for the Wells 2 well was actually strictly necessary when DL Resources also had two other wells, William Wells 1 and William Wells 3, located on that 23.44-acre surface estate. However, the Superior Court was very clear the access being the least expensive or most convenient does not satisfy the strict necessity requirement as a matter of law.[15] The Court set forth a list of factors trial courts should apply to determine whether strict necessity has been met.[16]

Is the Superior Court's distinction between creation of the implied surface use right and the actual use of that right a change in the law? The *Pennesi* opinion does not purport to overturn any prior decision, including *Belden & Blake*. Instead, the Court appears to reconcile existing cases on this question with a very specific set of facts by splitting the analysis into two steps with (1) creation of the implied right and (2) whether the use of that right is reasonable. *Pennesi* also makes clear that Pennsylvania law on the creation of implied easements by necessity fully apply to such questions even in the context of oil and gas leases.[17]

Nevertheless, the *Pennesi* court's blessing of the "strict necessity" requirement and use of that language will inherently impact the calculation of operators' rights in similar situations and embolden surface-estate owners to challenge any operator's claim of implied right of reasonable surface use. While this issue may not arise all that often in large-scale projects, such as unconventional oil and gas development, because operators routinely acquire surface use agreements, *Pennesi* provides a very clear motivation for operators to proactively understand their surface rights before development.

If you have questions about this decision and its implications for land use agreements, please contact the author or any attorney with our Oil, Gas & Minerals team.

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[1] *Pennesi v. DL Resources, Inc.*, 2026 PA Super 139, —A.3d—. A copy of this opinion can be found here.

[2] *Id.*, *1-2.

[3] *Id.*, *2.

[4] *Id.*

[5] *Pennesi*, 2026 PA Super 139, *2.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*, *3.

[10] *Id.*

[11] *Pennesi*, *supra.*, *2.

[12] *Id.*

[13] *Id.*, *4-5.

[14] *Id.*, *11.

[15] *Id.*, *10.

[16] "The central inquiry is whether, absent the recognition of [an implied right-of-way by necessity], the proposed dominant estate will be left without a means of ingress and egress, rendering the [estate] inaccessible and, thus, unusable." *Id.*, *9 (bracketed language in original; internal citations omitted).

[17] *Pennesi*, 2026 PA Super 139, *8-9 (Applying Pennsylvania cases on the implied easement by necessity).

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