

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0575

RIKKI HELD; LANDER B., by and through his guardian Sara Busse; BADGE B., by and through his guardian Sara Busse; SARIEL SANDOVAL; KIAN T., by and through his guardian Todd Tanner; GEORGIANNA FISCHER; KATHRYN GRACE GIBSON-SNYDER; EVA L., by and through her guardian Mark Lighthiser; MIKA K., by and through his guardian Rachel Kantor; OLIVIA VESOVICH; JEFFREY K., by and through his guardian Laura King; NATHANIEL K., by and through his guardian Laura King; CLAIRE VLASES; RUBY D., by and through her guardian Shane Doyle; LILIAN D., by and through her guardian Shane Doyle; TALEAH HERNÁNDEZ,

ORDER

Plaintiffs and Appellees,

v.

STATE OF MONTANA, GOVERNOR GREG GIANFORTE, MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, and MONTANA DEPARTMENT OF TRANSPORTATION,

Defendants and Appellants.

Appellants State of Montana et al. (State) filed a M. R. App. P. 22(2)(a) motion for relief from the November 21, 2023 Order Denying Defendants' Motion for Clarification and for Stay of Judgment Pending Appeal entered by the First Judicial District Court, Lewis and Clark County, in its Cause No. CDV-2020-307. The State seeks relief from the Order on the basis that the District Court did not correctly weigh the factors governing stays and

that good cause exists to provide the State with relief from that order. Appellees Rikki Held, et al. (Held) oppose the motion for relief.

We review a decision of a district court granting or denying a stay for abuse of discretion. *Ternes v. State Farm Fire & Cas. Co.*, 2011 MT 156, ¶ 17, 361 Mont. 129, 257 P.3d 352. The test for abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. *Jarvenpaa v. Glacier Elec. Co-op*, 1998 MT 306, ¶ 13, 292 Mont. 118, 970 P.2d 84. In reviewing the decision, we are guided by a number of considerations. First, the Court considers Rule 22(2)(a)(i), which requires that an appellant demonstrate good cause for the relief requested. “Good cause” is generally defined as a legally sufficient reason and referred to as the burden placed on a litigant to show why a request should be granted. *Brookins v. Mote*, 2012 MT 283, ¶ 29, 367 Mont. 193, 292 P.3d 347 (citations omitted). The Court also looks to the general factors governing stays of civil judgments articulated in *Hilton v. Braunskill*, 481 U.S. 770, 107 S. Ct. 2113 (1987). Those factors are: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

In its order denying the stay, the District Court ruled that: (1) the State did not establish that it is likely to succeed on appeal because it did not identify errors in the underlying decision; (2) the State raised alleged harms for the first time in its brief in support of its motion for stay and did not meet its burden of establishing that it would suffer irreparable harm absent a stay; (3) Held will suffer irreparable harm if the District Court’s ruling is stayed; and (4) the State failed to demonstrate that the public interest would be harmed if a stay is denied. In weighing these factors, the court concluded that it was appropriate to deny the State’s motion for stay because each factor preponderated against granting the State’s motion.

In its motion for relief before this Court, the State argues that the District Court erred in its analysis of the factors. Held responds that the State has not met its burden of proving that the District Court abused its discretion in denying the stay. We consider whether the District Court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice in analyzing the factors and reaching its conclusion. *Jarvenpaa*, ¶ 13. The State has the burden to demonstrate good cause for this Court to grant relief from the District Court's Order denying the stay. *Mont. Enviro. Info. Ctr. v. Westmoreland Rosebud Mining, LLC*, DA 22-0064, Order (Mont. Aug. 9, 2022).

In its motion for relief, the State argues that the District Court erred in concluding that the State had the burden of demonstrating that it was likely to succeed on the merits because it only needed to demonstrate that the case involves novel and unsettled legal questions. The State relies on *Maxcrest Ltd. v. United States*, No. 15-MC-80270-JST, 2016 U.S. Dist. LEXIS 15501, 2016 WL 6599463 (N.D. Cal. Nov. 7, 2016), for this proposition, but it does not explain why it believes this Court should adopt *Maxcrest's* interpretation of this factor. Held disputes the State's contention that this case involves novel and unsettled legal questions. Held maintains that the legal questions at issue here were addressed in prior decisions of this Court. Held further notes that the State did not offer this interpretation of the first factor below and thus the District Court cannot have abused its discretion for failing to rule on an argument that was not made to it.

We agree with Held that, as to the first factor, the State has not demonstrated that the District Court abused its discretion in determining that this factor preponderates against a stay. The State did not cite *Maxcrest* below, nor does it offer any argument as to why *Maxcrest's* interpretation of this factor should control our analysis here.

As to the second factor, the State argues that the District Court abused its discretion by holding that the State would not be irreparably harmed by a stay because an order enjoining a duly enacted statute always irreparably harms the State. It further maintains that, if not stayed, the decision will require the State to develop and implement methods to

analyze greenhouse gas emissions and climate impacts that may ultimately be unnecessary if the State prevails on appeal. It argues that it will be forced to spend considerable resources to develop and implement methods for greenhouse gas and climate impacts analysis and, if not done with proper care, it will open itself up to liability for damages caused by a “slipshod analysis cobbled together to avoid contempt of widespread litigation against State agencies’ MEPA review and permitting decisions.”

In considering this argument when it denied the State’s motion to stay, the District Court concluded that any potential harms to the State or any other party were not irreparable. It noted that its decision did not prevent the Montana Department of Environmental Quality (DEQ) from carrying out its statutory functions, including performing environmental analyses on permit applications and deciding whether to issue permits. It further asserted that DEQ’s declarant had testified at trial that DEQ had previously analyzed greenhouse gas emissions and climate impacts in conducting MEPA reviews and that DEQ could conduct these reviews if it had the authority to do so.

On motion for relief to this Court, the State does not assert that the District Court misinterpreted DEQ’s testimony. It further does not explain why it believes it would be exceedingly burdensome to reimplement methods for greenhouse gas and climate impacts analysis when it had previously done so.

Although it did not raise this argument before the District Court, the State now focuses on whether enjoining a state from enacting legislation is itself an irreparable harm. *Maryland v. King*, 567 U.S. 1301, 1303, 133 S. Ct. 1, 3 (2012) (citation omitted). We cannot fault the District Court or conclude that it abused its discretion for failing to address an argument the State did not make. We therefore conclude that the District Court did not abuse its discretion in its consideration of this factor.

As to the third factor, whether issuance of the stay will substantially injure the other parties interested in the proceeding, the District Court concluded that Held had demonstrated substantial injury as the alleged injury caused by the statutes at issue was the subject of the litigation, the result of which is the District Court’s ruling that the State had

violated Held's constitutional right to a clean and healthful environment. The District Court noted that we have held, for the purpose of preliminary injunctions, that the loss of a constitutional right constitutes an irreparable injury. *Driscoll v. Stapleton*, 2020 MT 247, ¶ 15, 401 Mont. 405, 473 P.3d 386. In its motion for relief before this Court, the State does not address this reasoning nor the constitutional implications of the District Court's Order. Instead, the State argues that Held will not be harmed by a stay because DEQ will continue to issue permits for "fossil fuel projects" regardless of whether this decision is stayed or not and thus a stay will not relieve Held's alleged harms. The burden is on the State to prove that the District Court abused its discretion in denying its motion to stay. The State has failed to meet its burden as to the third factor.

As to the fourth factor, the State asserts that the public interest lies in staying the District Court's decision because the District Court wrongly decided the case. It further argues that, if this matter is not stayed, the public will be deprived of its right to notice and comment on a significant change to MEPA review. In addition to defending the underlying decision, Held argues that the State presented no evidence that the District Court's rulings would require the State to adopt, amend, or repeal any administrative rules during the pendency of the appeal that would require notice and comment under MAPA. In its order denying the stay, the District Court found unpersuasive the State's argument that regulatory disruptions to the energy industry could occur absent a stay, as it might preclude DEQ from issuing permits for new coal mining operations or gas generating plants, which might, in turn, increase costs for Montana energy consumers because the State had not presented sufficient evidence of this possible consequence. Where arguments both for and against the stay assert a valid public interest, we cannot conclude that the District Court abused its discretion in weighing those competing public interests and reaching a decision. *MTSUN, LLC v. Mont. Dep't of Pub. Serv. Regulation*, No. OP 19-0363, Order (Mont. Aug. 6, 2019).

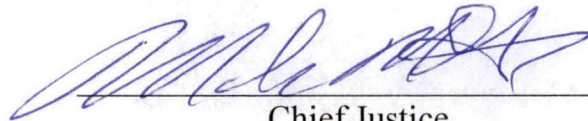
Having considered the District Court's Order Denying Defendants' Motion for Clarification and For Stay of Judgment Pending Appeal and the parties' arguments, we

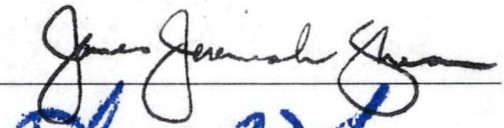
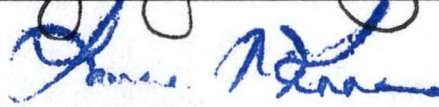
conclude that the District Court did not act arbitrarily or exceed the bounds of reason in weighing these factors and denying the State's motion to stay. Since the District Court did not abuse its discretion, the State does not provide good cause to disturb its ruling.

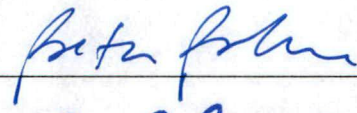
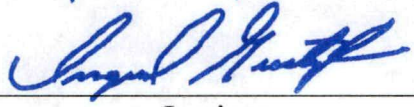
IT IS ORDERED that the M. R. App. P. 22(2)(a) motion for relief from the District Court's order is DENIED.

The Clerk is directed to provide copies of this Order to all counsel of record.

Dated this 16<sup>th</sup> day of January, 2024.

  
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Chief Justice

  
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Justices

**FILED**  
JAN 16 2024  
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Clerk of Supreme Court  
State of Montana

Justices Jim Rice and Dirk Sandefur would grant the Motion to Stay.