

SUPREME COURT OF NEBRASKA

Gruenewald v. Waara

229 Neb. 619 (1988) (Neb. 1988) · No. Nos. 86-779, 86-780 · Decided August 26, 1988

SUMMARY

The Supreme Court of Nebraska affirmed the refusal to register a Texas default judgment under Nebraska's Uniform Enforcement of Foreign Judgments Act because the plaintiffs did not provide addresses reasonably certain to result in notice to the defendants. The court dismissed a separate appeal from the denial of a plea in bar because the order was not final and appealable.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Caporale, Justice; Boslaugh, J.; Caporale, J.; Grant, J.; Buckley, District Judge; Colwell, District Judge, Retired
JURISDICTION	Nebraska
DECIDED	August 26, 1988
DOCKET	Nos. 86-779, 86-780
DISPOSITION	other
PROCEDURAL POSTURE	In No. 86-779, the plaintiffs appealed after the trial court refused to register a Texas default judgment and denied a motion for new trial based on newly discovered evidence. In No. 86-780, the defendants appealed from an order overruling their plea in bar based on the Texas judgment.
STANDARD OF REVIEW	The foreign-judgment registration proceeding was a statutory action at law and was reviewed under the standards applicable to law actions. The trial court's factual finding regarding the adequacy of the service addresses was treated like a verdict and would not be set aside unless clearly wrong; the court did not reweigh the evidence. The denial of a new-trial motion based on newly discovered evidence was upheld where reasonable diligence to discover and produce the evidence at trial was not shown.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Alvin Gruenewald, Bud's Flying Service, Ltd., El Marc Air, Inc. v. William A. Waara, Louis Minkoff

TOPICS

service of process

appellate jurisdiction

final judgment rule

interstate disputes

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PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

conflict of laws

QUESTIONS PRESENTED

1. Whether the Nebraska trial court properly refused to register the Texas default judgment because the Texas court lacked personal jurisdiction due to inadequate service of process.
2. Whether the trial court erred in denying a motion for new trial based on newly discovered evidence.
3. Whether an order overruling a plea in bar based on the foreign judgment was a final, appealable order.

HOLDINGS

1. An order overruling a plea in bar is not final and appealable when the unsuccessful parties may still prevail after a trial on the merits.
2. The Texas default judgment was void and not entitled to registration because the plaintiffs failed to provide the Texas Secretary of State with addresses at which service was reasonably certain to result in actual notice.
3. The motion for new trial was properly denied because the plaintiffs did not establish that the documents could not have been discovered and produced at trial with reasonable diligence.

KEY QUOTATIONS

“notice can be considered adequate only if it is transmitted in a manner which, at a minimum, “has a reasonable certainty of resulting” in actual notice.” (at 215)

“Applications for a new trial are entertained with reluctance and granted with caution, because of the manifest injustice in allowing a party to allege that which may be the consequence of his own neglect in order to defeat an adverse verdict, and, further, to prevent fraud and imposition which defeated parties may be tempted to practice to escape the consequences of an adverse verdict.” (at 216)

FACTUAL BACKGROUND

A Texas court entered a default judgment awarding Gruenewald and Bud's Flying Service \$696,774 against Waara and \$150,000 against Minkoff, and declaring a purported aircraft sale to Waara fraudulent and void. Service was made through the Texas Secretary of State under Texas's nonresident-business statute, but the process mailed to Waara's address was returned unclaimed and the address provided for Minkoff was an obsolete or controlled address unlikely to result in notice. The Nebraska trial court found that the plaintiffs had not supplied addresses with a reasonable certainty of resulting in actual notice.

PROCEDURAL HISTORY

Gruenewald and Bud's Flying Service sought registration in Nebraska of a Texas default judgment against Waara and Minkoff. The Nebraska trial court found that the Texas court lacked jurisdiction because the process addresses supplied to the Texas Secretary of State did not comply with Texas law, denied registration, and denied a new-trial motion. In the related aircraft ownership and lien action, the trial court overruled a plea in bar asserting that the Texas judgment precluded the suit; the Nebraska Supreme Court dismissed that appeal because the order was not final and appealable.

DISPOSITION

other

CASES CITED

- Schuster v. Douglas, 156 Neb. 484, 56 N.W.2d 618 (1953)
- Hines v. Pollock, 229 Neb. 614, 428 N.W.2d 207 (1988)
- Krueger v. Zarley, 229 Neb. 203, 425 N.W.2d 893 (1988)
- W & K Farms v. Hi-Line Farms, 226 Neb. 895, 416 N.W.2d 10 (1987)
- McCook Equity Exch. v. Cooperative Serv. Co., 223 Neb. 197, 388 N.W.2d 811 (1986)
- Lubin v. Lubin, 144 Cal. App. 2d 781, 302 P.2d 49 (1956)
- Miller v. Kingsley, 194 Neb. 123, 230 N.W.2d 472 (1975)
- Olson v. England, 206 Neb. 256, 292 N.W.2d 48 (1980)
- Cockle v. Cockle, 215 Neb. 329, 339 N.W.2d 63 (1983)
- In re Interest of A.W., 224 Neb. 764, 401 N.W.2d 477 (1987)
- McAllister v. McAllister, 228 Neb. 314, 422 N.W.2d 345 (1988)
- United Bank v. Dohm, 115 Ill. App. 3d 286, 71 Ill. Dec. 286, 450 N.E.2d 974 (1983)
- Fisbeck v. Scherbarth, Inc., 229 Neb. 453, 428 N.W.2d 141 (1988)
- McKinsty v. County of Cass, 228 Neb. 733, 424 N.W.2d 322 (1988)
- Kearney Centre Inv. v. Thomas, 229 Neb. 21, 424 N.W.2d 620 (1988)
- Reilly v. First Nat. Bank & Trust Co., 220 Neb. 443, 370 N.W.2d 163 (1985)
- Smith v. Erftmier, 210 Neb. 486, 315 N.W.2d 445 (1982)
- Jensen v. John Hancock Mutual Life Ins. Co., 145 Neb. 409, 16 N.W.2d 847 (1944)