

NEBRASKA SUPREME COURT

REO Enterprises, LLC v. Village of Dorchester

306 Neb. 683 (2020) · No. No. S-18-970 · Decided August 7, 2020

SUMMARY

The Nebraska Supreme Court considered whether the Village of Dorchester’s ordinance requiring landlords to guarantee unpaid utility charges for tenant accounts violated the Equal Protection Clauses of the U.S. and Nebraska Constitutions. Applying rational basis review, the court held that the classification distinguishing residential tenants from property owners was rationally related to the village’s legitimate interest in collecting utility charges. The court reversed the district court’s judgment for REO Enterprises and remanded for further proceedings.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	August 7, 2020
DOCKET	No. S-18-970
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Village of Dorchester appealed a district court order granting summary judgment to REO Enterprises and declaring municipal ordinance No. 684 unconstitutional under the Equal Protection Clauses of the United States and Nebraska Constitutions.
STANDARD OF REVIEW	Interpretation and constitutionality of a municipal ordinance are questions of law reviewed independently.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Village of Dorchester v. REO Enterprises, LLC, Ange Lara

TOPICS

[equal protection](#)

[rational basis review](#)

[ordinances](#)

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[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether ordinance No. 684's requirement that residential tenants obtain a landlord's guarantee of unpaid utility charges, while residential owners were not required to obtain a third-party guarantee, violated the Equal Protection Clauses of the United States and Nebraska Constitutions.
2. Whether the Nebraska Supreme Court could address REO's remaining claims concerning the Equal Credit Opportunity Act, Nebraska's special-legislation provision, and the Uniform Residential Landlord and Tenant Act when the district court had not passed on those claims and REO had not cross-appealed.

HOLDINGS

1. Ordinance No. 684's classification requiring residential tenants to obtain landlord guarantees for utility charges, but not requiring residential owners to obtain third-party guarantees, does not violate the Equal Protection Clauses of the United States and Nebraska Constitutions.
2. The court would not address REO's remaining statutory and constitutional claims because they had not been passed upon by the trial court and REO had not cross-appealed.

KEY QUOTATIONS

“The rational basis test, which is the most relaxed and tolerant form of judicial scrutiny of equal protection claims, is satisfied as long as (1) there is a plausible policy reason for the classification, (2) the legislative facts on which the classification is based may rationally have been considered to be true by the governmental decisionmaker, and (3) the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.” (689)

“A State . . . has no obligation to produce evidence to sustain the rationality of a statutory classification.” (692)

“While Dorchester may have had alternate avenues to address its goal of ensuring payment of utility bills through higher security deposits and collecting from liens imposed on properties, the rational basis test does not require a governmental entity to choose a specific course of action to address its legitimate interest.” (696-697)

FACTUAL BACKGROUND

REO owned residential rental property in the Village of Dorchester. After ordinance No. 684 took effect, Dorchester required a tenant, Ange Lara, to obtain REO's written guarantee of unpaid utility charges before providing utility service in Lara's name. Lara paid a deposit, but Dorchester refused service in her name because of the guarantee requirement and a prior unpaid utility bill, while continuing service through an account in an REO representative's name. The district court found the ordinance's different treatment of tenants and residential owners lacked a rational relationship to the Village's interest in collecting utility charges.

PROCEDURAL HISTORY

REO filed a declaratory action challenging ordinance No. 684, which required a tenant seeking utility service to obtain the landlord's written guarantee of unpaid utility charges. Both parties moved for summary judgment. The Saline County District Court granted summary judgment to REO, denied the Village's motion, and declared the ordinance unconstitutional. The Nebraska Supreme Court reversed and remanded for consideration of REO's remaining claims, which the district court had not addressed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the district court for further proceedings on REO's remaining claims, including the Equal Credit Opportunity Act claim, the Nebraska special-legislation claim, and the claim under Nebraska's Uniform Residential Landlord and Tenant Act.

CASES CITED

- Wilkison v. City of Arapahoe, 302 Neb. 968, 926 N.W.2d 441 (2019)
- Dowd Grain Co. v. County of Sarpy, 291 Neb. 620, 867 N.W.2d 599 (2015)
- Lingenfelter v. Lower Elkhorn NRD, 294 Neb. 46, 881 N.W.2d 892 (2016)
- DeCoste v. City of Wahoo, 255 Neb. 266, 583 N.W.2d 595 (1998)
- State v. Montoya, 304 Neb. 96, 933 N.W.2d 558 (2019)
- Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007)
- Heller v. Doe, 509 U.S. 312, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993)
- JB & Associates v. Nebraska Cancer Coalition, 303 Neb. 855, 932 N.W.2d 71 (2019)
- Midkiff v. Adams County Regional Water District, 409 F.3d 758 (6th Cir. 2005)
- DiMassimo v. City of Clearwater, 805 F.2d 1536 (11th Cir. 1986)
- Chatham v. Jackson, 613 F.2d 73 (5th Cir. 1980)
- Golden v. City of Columbus, 404 F.3d 950 (6th Cir. 2005)
- O'Neal v. City of Seattle, 66 F.3d 1064 (9th Cir. 1995)
- Siedlik v. Nissen, 303 Neb. 784, 931 N.W.2d 439 (2019)
- Capitol City Telephone v. Nebraska Department of Revenue, 264 Neb. 515, 650 N.W.2d 467 (2002)