

SUPREME COURT OF NEBRASKA

Nelssen v. Ritchie

304 Neb. 346 (2019) · No. No. S-18-1020 · Decided October 25, 2019

SUMMARY

The Nebraska Supreme Court affirmed the denial of Pamela Nelssen’s motion to revive a dormant judgment against Hal T. Ritchie. The court held that partial payments on the underlying debt did not toll the statutory deadline for reviving the judgment because the judgment was not a contract under Nebraska law. It also held that Nelssen had not established equitable estoppel or waiver, and concluded that the revivor deadline expired in 2011.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	October 25, 2019
DOCKET	No. S-18-1020
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Lancaster County District Court's order overruling Nelssen's motion to revive a dormant judgment as untimely.
STANDARD OF REVIEW	Statutory interpretation is reviewed as a question of law, with an independent appellate conclusion. Because equitable estoppel and waiver sound in equity, factual questions are reviewed de novo on the record, with independent conclusions on questions of fact and law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Pamela Nelssen v. Hal T. Ritchie

TOPICS

- civil procedure
- statute of limitations
- statutory interpretation
- waiver
- appellate procedure

PRACTICE AREAS

- civil procedure
- judgment enforcement
- contracts
- equity

QUESTIONS PRESENTED

1. Whether partial payments on a judgment toll the statutory period for reviving a dormant judgment under Neb. Rev. Stat. § 25-216.
2. Whether equitable estoppel or waiver prevented Ritchie from asserting that Nelssen's motion to revive the judgment was untimely.
3. Whether the district court properly denied Nelssen's motion for revivor.

HOLDINGS

1. Neb. Rev. Stat. § 25-216, which permits tolling in causes founded on contract after partial payment, does not toll the 10-year statutory period for reviving a dormant judgment because a judgment is not a contract for purposes of that statute.
2. Assuming equitable estoppel could apply to a statutory deadline for reviving a dormant judgment, Nelssen failed to establish the doctrine because the record did not show that Ritchie knowingly made a false representation or concealed material facts on which Nelssen relied to her detriment.
3. Ritchie's agreement to make payments did not establish waiver because the record did not show a clear, unequivocal, and decisive act, or full knowledge of the material facts, demonstrating an intentional relinquishment of the right to assert that the judgment had become dormant and the revivor period had expired.

KEY QUOTATIONS

“When a valid and final judgment is entered, the original claim “is extinguished and rights upon the judgment are substituted for it.” (351)

“The deadline to revive the dormant judgment was not tolled by Ritchie’s payments.” (353)

“Because we see no reason to conclude that the deadline to revive a dormant judgment was extended, we conclude that it expired in 2011.” (355)

FACTUAL BACKGROUND

Nelssen obtained a \$200,000 judgment plus interest against Ritchie in 1996 after an apparent default on a promissory-note action. Ritchie made payments totaling approximately \$132,300 from 1996 through 2017, while Nelssen did not execute on the judgment. After payments stopped, Nelssen sought revivor in 2018, asserting that the payments tolled the revivor deadline or that Ritchie was barred by equitable estoppel or waiver from asserting untimeliness.

PROCEDURAL HISTORY

Nelssen obtained a \$200,000 default judgment against Ritchie in 1996. Ritchie made payments for many years, but Nelssen did not execute on the judgment or seek revivor until 2018. The district court held that the judgment became dormant in 2001, that the 10-year period for revivor expired in 2011, and that partial payments, equitable estoppel, and waiver did not extend the deadline. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Weyh v. Gottsch, 303 Neb. 280, 929 N.W.2d 40 (2019)
- deNourie & Yost Homes v. Frost, 289 Neb. 136, 854 N.W.2d 298 (2014)
- Fry v. Fry, 281 Neb. 1001, 800 N.W.2d 671 (2011)
- Alexanderson v. Wessman, 158 Neb. 614, 64 N.W.2d 306 (1954)
- American Nat. Bank v. Medved, 281 Neb. 799, 801 N.W.2d 230 (2011)
- Yergensen v. Ford, 402 P.2d 696 (Utah 1965)
- Quaintance v. Fogg, 392 So. 2d 360 (Fla. App. 1981)
- Sharp v. Sharp, 154 Kan. 175, 117 P.2d 561 (1941)
- Olson v. Dahl, 99 Minn. 433, 109 N.W. 1001 (1906)
- La Salle Extension University v. Barr, 19 N.J. Misc. 387, 20 A.2d 609 (1941)
- Farmers & Merchants Bank v. Merryman, 126 Neb. 684, 254 N.W. 428 (1934)
- Christine W. v. Trevor W., 303 Neb. 245, 928 N.W.2d 398 (2019)
- Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007)
- Omaha Police Union Local 101 v. City of Omaha, 292 Neb. 381, 872 N.W.2d 765 (2015)
- Bryan M. v. Anne B., 292 Neb. 725, 874 N.W.2d 824 (2016)
- State ex rel. Wagner v. Amwest Surety Ins. Co., 280 Neb. 729, 790 N.W.2d 866 (2010)