

SUPREME COURT OF NORTH DAKOTA

Langowski v. Altendorf

2012 ND 34 · No. 20110184 · Decided February 17, 2012

SUMMARY

The North Dakota Supreme Court affirmed summary judgment dismissing Kara Lynn Langowski’s negligence action against Charleen Altendorf. The court held that service by mail under N.D.R.Civ.P. 4(d)(2)(A)(v) is complete upon actual delivery or refusal, not mailing, and therefore Langowski failed to commence the action within the applicable six-year statute of limitations.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom; Daniel J. Crothers; Mary Muehlen Maring; Carol Ronning Kapsner; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	February 17, 2012
DOCKET	20110184
DISPOSITION	affirmed
PROCEDURAL POSTURE	Langowski appealed from a summary judgment dismissing with prejudice her negligence action against Altendorf for failure to serve Altendorf within the applicable six-year statute of limitations.
STANDARD OF REVIEW	The Supreme Court reviewed the grant of summary judgment de novo and viewed the evidence in the light most favorable to the party opposing summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kara Lynn Langowski v. Charleen Altendorf

TOPICS

- service of process
- statute of limitations
- summary judgment
- personal jurisdiction
- standard of review

PRACTICE AREAS

- civil procedure
- personal injury
- negligence
- statute of limitations
- personal jurisdiction

QUESTIONS PRESENTED

1. Whether service under N.D.R.Civ.P. 4(d)(2)(A)(v) is complete when a summons and complaint are mailed or only when they are actually delivered to or refused by the defendant.
2. Whether Langowski commenced her negligence action within the six-year statute of limitations.
3. Whether affixing the summons and complaint to Altendorf's residence constituted valid service and conferred personal jurisdiction.

HOLDINGS

1. Service by mail or third-party commercial delivery under N.D.R.Civ.P. 4(d)(2)(A)(v) is complete upon actual delivery to, or refusal of delivery by, the defendant, not when the summons and complaint are placed in the mail.
2. Langowski did not commence her negligence action within the six-year statute of limitations because she did not deliver the summons and complaint to Altendorf by August 23, 2010, the limitations expiration date.
3. Affixing the summons and complaint to Altendorf's door did not constitute valid service under N.D.R.Civ.P. 4(d)(2)(A), even though Altendorf discovered the documents on the limitations expiration date.

KEY QUOTATIONS

"We conclude service under N.D.R.Civ.P. 4(d)(2)(A)(v) is complete at the time of actual delivery and not when a summons is placed in the mail." (¶ 21)

"A party must strictly comply with the specific requirements for service of process." (¶ 23)

"Absent valid service of process, even actual knowledge of the existence of a lawsuit is insufficient to effectuate personal jurisdiction over a defendant." (¶ 23)

FACTUAL BACKGROUND

Langowski alleged that Altendorf struck her with a vehicle on August 21, 2004, causing bodily injury. On August 23, 2010, Langowski mailed the summons and complaint to Altendorf by certified mail, but Altendorf did not receive and sign for them until August 25, 2010. Earlier personal-service attempts had failed, and a summons and complaint affixed to Altendorf's door did not comply with the service requirements for an individual over fourteen years old.

PROCEDURAL HISTORY

Langowski sued Altendorf for negligence arising from a 2004 automobile-pedestrian accident. The district court granted Altendorf summary judgment, concluding the action was not commenced within the limitations period because Altendorf did not receive and sign for the mailed summons and complaint until August 25, 2010. The North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Gratech Co., Ltd. v. Wold Eng'g, P.C., 2003 ND 200, 672 N.W.2d 672
- Koapke v. Herfendal, 2003 ND 64, 660 N.W.2d 206
- Lucas v. Riverside Park Condominiums Unit Owners Ass'n, 2009 ND 217, 776 N.W.2d 801
- Makeeff v. City of Bismarck, 2005 ND 60, 693 N.W.2d 639
- Erickson v. Scotsman, Inc., 456 N.W.2d 535 (N.D. 1990)
- Hanson v. Williams County, 389 N.W.2d 319 (N.D. 1986)
- American Family Ins. v. Waupaca Elevator Co., Inc., 2012 ND 13, 809 N.W.2d 337
- State v. Dimmler, 456 N.W.2d 297 (N.D. 1990)
- Long v. Jaszczak, 2004 ND 194, 688 N.W.2d 173
- Code v. Gaunce, 315 N.W.2d 304 (N.D. 1982)
- Elliot v. Drayton Pub. Sch. Dist. No. 19, 406 N.W.2d 655 (N.D. 1987)
- Comstock Construction, Inc. v. Sheyenne Disposal, Inc., 2002 ND 141, 651 N.W.2d 656
- Sanderson v. Walsh County, 2006 ND 83, 712 N.W.2d 842
- Dundee Mut. Ins. Co. v. Balvitsch, 540 N.W.2d 609 (N.D. 1995)