## SUPREME COURT OF NEBRASKA

# Wayne L. Ryan Revocable Trust v. Ryan

308 Neb. 851 (2021) · No. S-19-951 · Decided April 9, 2021

### SUMMARY

The Nebraska Supreme Court affirmed a district court’s determination that Streck, Inc. must pay $467 million for the fair value of shares held by the Wayne L. Ryan Revocable Trust after Streck elected to purchase the shares in a shareholder-dissolution proceeding. The court also affirmed an award of approximately $256 million in prejudgment interest and the order requiring payment of the fair-value portion within 10 days. The opinion addresses valuation methods for closely held corporate stock, discounts for lack of control or marketability, deference to trial-court findings, prejudgment interest, and installment payments.

### CASE DETAILS

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| COURT | Supreme Court of Nebraska |
| WRITING FOR THE COURT | Funke, J.; Heavican, C.J.; Cassel, J.; Papik, J.; Freudenberg, J. |
| JURISDICTION | Nebraska |
| DECIDED | April 9, 2021 |
| DOCKET | S-19-951 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Streck appealed from a Sarpy County District Court judgment in a statutory shareholder-dissolution election-to-purchase proceeding. The Nebraska Supreme Court granted the parties' request for bypass and reviewed the district court's valuation of the petitioning shareholder's shares, award of prejudgment interest, and refusal to permit installment payments. |
| STANDARD OF REVIEW | A proceeding to determine the fair value of a petitioning shareholder's shares is equitable and is reviewed de novo on the record. The appellate court independently reviews the record but may give weight to the trial court's credibility determinations when credible evidence conflicts on material issues. Statutory interpretation and awards of prejudgment interest are reviewed de novo. The trial court's decision regarding payment terms is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE | Published opinion; precedential |

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| PARTIES | Streck, Inc. v. Wayne L. Ryan Revocable Trust et al., Constance “Connie” Ryan |

## TOPICS

corporate law · dissolution · appellate procedure · statutory interpretation · remedies

## PRACTICE AREAS

corporate law · shareholder litigation · business valuation · equitable remedies · appellate procedure

## QUESTIONS PRESENTED

1. Whether the district court improperly adopted the petitioning shareholder's proposed findings of fact nearly verbatim.
2. Whether the district court's $467 million valuation of the Trust's shares was supported by the evidence and applicable fair-value principles.
3. Whether prejudgment interest was authorized under Neb. Rev. Stat. § 21-20,166(5)(a) despite the absence of compliance with the general settlement-offer procedures in § 45-103.02.
4. Whether the district court abused its discretion by ordering Streck to make a lump-sum payment rather than allowing installment payments.
5. Whether Constance Ryan was a proper party to the share-valuation proceedings in her individual capacity.

## HOLDINGS

1. A bench-trial court may adopt a party's proposed findings verbatim if the findings and conclusions reflect the court's independent judgment and are supported by the evidence. Adoption of proposed findings does not eliminate ordinary appellate deference to factual findings; the critical inquiry is whether the adopted findings are clearly erroneous and prejudicial.
2. In an election-to-purchase proceeding following a shareholder's petition for dissolution, fair value must be determined from all material factors and elements affecting value, with each factor given the weight indicated by the circumstances. The trial court need not select one valuation method as categorically superior and may adopt one expert's model, methodology, and calculations when supported by credible evidence and critically analyzed on the record.
3. The valuation of corporate shares must be made without considering any increase in value resulting from the transaction itself.
4. Neb. Rev. Stat. § 21-20,166(5)(a) independently authorizes, but does not require, an award of prejudgment interest in a proceeding to purchase a petitioning shareholder's shares. The general settlement-offer requirements of § 45-103.02(1) do not apply because § 21-20,166(5)(a) establishes a separate statutory procedure and interest provision. Interest is unavailable only if the petitioning shareholder refused an offer of payment arbitrarily or otherwise in bad faith.

5. Under § 21-20,166(5)(a), the district court has discretion to determine the terms and conditions of the purchase, including whether installment payments are necessary in the interest of equity. The district court did not abuse that discretion by ordering lump-sum payment within 10 days.

### KEY QUOTATIONS

> *"Such a determination is to be based on all material factors and elements that affect value, given to each the weight indicated by the circumstances."* (877-878)

> *"A trial court's valuation of a closely held corporation is reasonable if it has an acceptable basis in fact and principle."* (878)

> *"While discharging its statutory mandate to value a shareholder's stock, it is entirely proper for a trial court to adopt one expert's model, methodology, and calculations if they are supported by credible evidence and the judge analyzes them critically on the record."* (879)

> *"Section 21-20,166(5)(a) is an independent statute authorizing the recovery of prejudgment interest."* (891-892)

> *"Section 21-20,166(5)(a) means what it says."* (892)

### FACTUAL BACKGROUND

Streck, a closely held Nebraska family corporation, was founded by Dr. Wayne L. Ryan and developed and manufactured laboratory diagnostic products. After Constance Ryan became CEO and obtained voting control, she initiated a sale process known as Project Blizzard, but the process excluded Dr. Ryan and other significant shareholders from meaningful participation and produced no acceptable transaction. The Wayne L. Ryan Revocable Trust filed an oppression and fiduciary-duty action seeking dissolution, after which Streck elected to purchase the Trust's shares. Following a bench trial involving competing business-valuation experts, the district court adopted a valuation of $467 million for the Trust's shares and awarded prejudgment interest.

### PROCEDURAL HISTORY

The Wayne L. Ryan Revocable Trust sued Constance Ryan and Streck, Inc., alleging shareholder oppression and breach of fiduciary duty and seeking judicial dissolution. Streck elected to purchase the Trust's shares under Neb. Rev. Stat. § 21-20,166, and the district court conducted a 9-day bench trial. The district court valued the shares at $467 million, awarded approximately $256 million in prejudgment interest, ordered payment of the fair-value portion within 10 days, dismissed the dissolution petition, and denied posttrial motions. Streck appealed, and the Supreme Court granted bypass.

### DISPOSITION

affirmed

### CASES CITED

- Rigel Corp. v. Cutchall, 245 Neb. 118, 511 N.W.2d 519 (1994)

- Wayne L. Ryan Revocable Trust v. Ryan, 297 Neb. 761, 901 N.W.2d 671 (2017)
- Anderson v. A & R Ag Spraying & Trucking, 306 Neb. 484, 946 N.W.2d 435 (2020)
- AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020)
- Weyh v. Gottsch, 303 Neb. 280, 929 N.W.2d 40 (2019)
- United States v. El Paso Gas Co., 376 U.S. 651, 84 S. Ct. 1044, 12 L. Ed. 2d 12 (1964)
- In re Estate of Lane, 39 Kan. App. 2d 1062, 188 P.3d 23 (2008)
- Indiana Industries, Inc. v. Wedge Products, 430 N.E.2d 419 (Ind. App. 1982)
- In re H.M., 2014 Ohio 755, 9 N.E.3d 470 (2014)
- In re M.B., 709 N.W.2d 11 (N.D. 2006)
- Bluford v. Wells Fargo Fin. Ohio 1, Inc., 176 Ohio App. 3d 500, 892 N.E.2d 920 (2008)
- Uptime Corp. v. Colorado Research Corp., 161 Colo. 87, 420 P.2d 232 (1966)
- Harris v. AHTNA, Inc., 193 P.3d 300 (Alaska 2008)
- Stevens v. Humana of Delaware, Inc., 832 P.2d 1076 (Colo. App. 1992)
- Fredericks Peebles v. Assam, 300 Neb. 670, 915 N.W.2d 770 (2018)
- Athlon Sports Communications v. Duggan, 549 S.W.3d 107 (Tenn. 2018)
- Belk of Spartanburg, S.C. v. Thompson, 337 S.C. 109, 522 S.E.2d 357 (S.C. App. 1999)
- Walter S. Cheesman Realty Co. v. Moore, 770 P.2d 1308 (Colo. App. 1988)
- Dell v. Magnetar Global Master Fund, 177 A.3d 1 (Del. 2017)
- Golden Telecom, Inc. v. Global GT LP, 11 A.3d 214 (Del. 2010)
- Union Illinois v. Union Financial Group, 847 A.2d 340 (Del. Ch. 2004)
- M.P.M. Enterprises, Inc. v. Gilbert, 731 A.2d 790 (Del. 1999)
- In re Application No. OP-0003, 303 Neb. 872, 932 N.W.2d 653 (2019)
- Brumbaugh v. Bendorf, 306 Neb. 250, 945 N.W.2d 116 (2020)
- Brook Valley Ltd. Part. v. Mutual of Omaha Bank, 285 Neb. 157, 825 N.W.2d 779 (2013)
- Matter of Carolina Gardens v. Menowitz, 238 A.D.2d 189, 655 N.Y.S.2d 536 (1997)
- Link v. L.S.I., Inc., 793 N.W.2d 44 (S.D. 2010)
- Dragon v. Cheesecake Factory, 300 Neb. 548, 915 N.W.2d 418 (2018)
- Anderson v. A & R Ag Spraying & Trucking, 306 Neb. 484, 946 N.W.2d 435 (2020)


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