

NEBRASKA SUPREME COURT

Schaaf v. Schaaf

312 Neb. 1 (2022) · No. No. S-21-251 · Decided July 22, 2022

SUMMARY

The Nebraska Supreme Court held that a partial summary judgment constituted a final submission as to one claim, depriving the plaintiffs of the statutory right to voluntarily dismiss the entire action without prejudice under Neb. Rev. Stat. § 25-601. The court further held that the district court had authority to vacate the dismissal and reinstate the case. The dismissal order was reversed and the cause 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	July 22, 2022
DOCKET	No. S-21-251
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellants appealed the district court's order dismissing their case on the ground that their earlier voluntary dismissal without prejudice had automatically ended the action and that the subsequent reinstatement was a nullity.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is reviewed de novo. Statutory interpretation is reviewed independently as a question of law. An order vacating a judgment or order during the term in which it was entered is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published opinion
PARTIES	Daniel D. Schaaf and Ronald R. Schaaf, Copersonal Representatives of the Estate of Lorene M. Schaaf v. Tommy B. Schaaf, Susan M. Schaaf

TOPICS

summary judgment

civil procedure

appellate jurisdiction

statutory interpretation

probate procedure

PRACTICE AREAS

civil procedure

appellate procedure

probate litigation

QUESTIONS PRESENTED

1. Whether the district court's dismissal order was a final, appealable order.
2. Whether a partial summary judgment constituted a final submission that deprived plaintiffs of the statutory right to voluntarily dismiss the entire action without prejudice under Neb. Rev. Stat. § 25-601.
3. Whether the district court retained authority to vacate its dismissal order and reinstate the case under Neb. Rev. Stat. § 25-2001(1).

HOLDINGS

1. The district court's order dismissing the case completely disposed of the subject matter and affected a substantial right, making it a final, appealable order.
2. A partial summary judgment constitutes a final submission as to the claim resolved by the judgment. After such a final submission, the plaintiff lacks the statutory right to voluntarily dismiss the entire action without prejudice, although the plaintiff retains the right to dismiss claims that have not been finally submitted.
3. The district court had jurisdiction to consider and grant the motion to vacate and reinstate the case, and its reinstatement order was not a nullity.

KEY QUOTATIONS

“A final submission of an action contemplates submission upon both law and facts, and it only exists when nothing remains to be done to render it complete.” (at 8)

“While the final submission on the fraud claim did not affect whether Appellants could voluntarily dismiss their undue influence claims, it did affect whether they could voluntarily dismiss the entire action pursuant to § 25-601.” (at 10)

“Thus, its subsequent order reinstating the case was not a nullity, and the district court erred in determining that the case “[stood] dismissed pursuant to [Appellants’] voluntary dismissal.”” (at 12)

FACTUAL BACKGROUND

Daniel and Ronald Schaaf, copersonal representatives of their mother's estate, sued Tommy and Susan Schaaf alleging undue influence and fraud in the inducement concerning conveyances of real estate. The district court granted partial summary judgment on one fraud-in-the-inducement claim but denied summary judgment on the remaining claims. The representatives then filed a voluntary dismissal without prejudice, later sought to reinstate the action after a related county court action was dismissed for lack of subject matter jurisdiction, and the district court initially reinstated the case before ultimately dismissing it.

PROCEDURAL HISTORY

Appellants filed claims concerning undue influence and fraud in the inducement involving real property devised by their mother. The district court granted partial summary judgment against one fraud claim. Appellants then filed a voluntary dismissal without prejudice, filed a new action in county court that was dismissed for lack of subject matter jurisdiction, and obtained an order from the district court vacating its dismissal and reinstating the original case. The district court later concluded that the voluntary dismissal had immediately terminated the case and dismissed it; the Nebraska Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings consistent with the opinion.

CASES CITED

- In re Grand Jury of Douglas Cty., 302 Neb. 128, 922 N.W.2d 226 (2019)
- Kibler v. Kibler, 287 Neb. 1027, 845 N.W.2d 585 (2014)
- Millard Gutter Co. v. American Family Ins. Co., 300 Neb. 466, 915 N.W.2d 58 (2018)
- Big John's Billiards v. State, 283 Neb. 496, 811 N.W.2d 205 (2012)
- State v. Vela, 272 Neb. 287, 721 N.W.2d 631 (2006)
- Boyd v. Cook, 298 Neb. 819, 906 N.W.2d 31 (2018)
- Beals v. Western Union Telegraph Co., 53 Neb. 601, 74 N.W. 54 (1898)
- Sharpless v. Giffen, 47 Neb. 146, 66 N.W. 285 (1896)
- Holste v. Burlington Northern RR. Co., 256 Neb. 713, 592 N.W.2d 894 (1999)
- Horton v. State, 63 Neb. 34, 88 N.W. 146 (1901)
- Sheedy v. McMurtry, 44 Neb. 499, 63 N.W. 21 (1895)
- Tuttle v. Wyman, 149 Neb. 769, 32 N.W.2d 742 (1948)
- Collection Specialists v. Vesely, 238 Neb. 181, 469 N.W.2d 549 (1991)
- Pettegrew v. Pettegrew, 128 Neb. 783, 260 N.W. 287 (1935)
- Knaak v. Brown, 115 Neb. 260, 212 N.W. 431 (1927)
- Nelson v. Omaha & C. B. Street R. Co., 93 Neb. 154, 139 N.W. 860 (1913)
- Bee Building Co. v. Dalton, 68 Neb. 38, 93 N.W. 930 (1903)
- Nebraska Republican Party v. Shively, 311 Neb. 160, 971 N.W.2d 128 (2022)
- Molczyk v. Molczyk, 285 Neb. 96, 825 N.W.2d 435 (2013)
- Smith v. Lincoln Meadows Homeowners Assn., 267 Neb. 849, 678 N.W.2d 726 (2004)
- Kansas Bankers Surety Co. v. Halford, 263 Neb. 971, 644 N.W.2d 865 (2002)
- Wright v. Eddinger, 320 Ark. 151, 894 S.W.2d 937 (1995)

- Mary Morgan, Inc. v. Melzark, 49 Cal. App. 4th 765, 57 Cal. Rptr. 2d 4 (1996)
- Brandt v. Joseph F. Gordon Architect, Inc., 998 P.2d 587 (Okla. 1999)
- Bio-Medical Applications, Inc. v. Coston, 272 Va. 489, 634 S.E.2d 349 (2006)
- Beritich v. Starlet Corporation, 69 Wash. 2d 454, 418 P.2d 762 (1966)
- State v. Scott, 22 Neb. 628, 36 N.W. 121 (1888)
- Plattsmouth Loan & Bldg. Ass'n v. Sedlak, 128 Neb. 509, 259 N.W. 367 (1935)
- Werner v. Werner, 186 Neb. 558, 184 N.W.2d 646 (1971)
- Miller v. Harris, 195 Neb. 75, 236 N.W.2d 828 (1975)
- Blue River Power Co. v. Hronik, 116 Neb. 405, 217 N.W. 604 (1928)
- Feight v. Mathers, 153 Neb. 839, 46 N.W.2d 492 (1951)