

NEBRASKA SUPREME COURT

In re Estate of Madeline A. Adelung

312 Neb. 647 (2022) · No. No. S-21-838 · Decided October 14, 2022

SUMMARY

The Nebraska Supreme Court considered whether a county court, on remand, could award prejudgment interest in an estate accounting matter. The court held that the estate was not entitled to prejudgment interest because it had neither pleaded the claim nor provided notice of it before judgment, and it affirmed the county court's decision. The court did not reach the appellee's cross-appeal.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.; Noakes, District Judge; Miller-Lerman, J., participating on briefs
JURISDICTION	Nebraska
DECIDED	October 14, 2022
DOCKET	No. S-21-838
DISPOSITION	affirmed
PROCEDURAL POSTURE	The estate appealed, and Kent Adelung cross-appealed, from the Buffalo County Court's refusal to award prejudgment interest after remand for recalculation of damages.
STANDARD OF REVIEW	Construction of an appellate mandate is a question of law reviewed independently. Questions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Lynda Adelung Heiden, Personal Representative of the Estate of Madeline A. Adelung, deceased v. Kent A. Adelung

TOPICS

probate procedure appellate procedure prejudgment interest pleadings remedies

PRACTICE AREAS

Probate Appellate procedure Civil procedure Remedies

QUESTIONS PRESENTED

1. Whether the county court's refusal on remand to award prejudgment interest was outside or inconsistent with the Nebraska Supreme Court's prior mandate.
2. Whether the estate could recover prejudgment interest when it neither requested the interest in its pleading nor provided notice of the issue before entry of judgment.
3. Whether Kent Adelung's cross-appeal concerning pleading and substantive entitlement to prejudgment interest needed to be decided.

HOLDINGS

1. Under the mandate branch of the law-of-the-case doctrine, a lower court may not take action apart from what the appellate mandate directs or permits, and issues decided or necessarily resolved in the prior appeal are conclusively settled. An issue may escape waiver only when the party lacked both an opportunity and an incentive to raise it in the prior appeal.
2. When prejudgment interest is sought, the failure to comply with Neb. Ct. R. Pldg. § 6-1108(a) may be excused only if the opposing party otherwise had notice and an opportunity to be heard before judgment. Because the estate neither pleaded prejudgment interest nor provided Kent notice before judgment, the county court properly refused to award it on remand.

KEY QUOTATIONS

“Upon remand, a district court may not render a judgment or take action apart from that which the appellate court’s mandate directs or permits.” (648)

“If there was notice, the failure to comply with § 6-1108 might be excusable. But here, there was no compliance with § 6-1108, nor was there notice to Kent on the issue of prejudgment interest prior to the entry of judgment in the Estate’s favor.” (653)

FACTUAL BACKGROUND

The estate's personal representative obtained a judgment against Kent Adelung in an equitable accounting action involving farm income. In an earlier appeal, the Nebraska Supreme Court modified the judgment based on the statute of limitations and remanded for recalculation of damages, without addressing prejudgment interest. On remand, the estate sought prejudgment interest even though it had not requested the interest in its pleading or otherwise raised it before judgment, and the county court refused to award it.

PROCEDURAL HISTORY

In the prior appeal, the Nebraska Supreme Court held that the statute of limitations barred recovery of part of the farm income allegedly wrongfully collected by Kent Adelung, modified the county court's judgment, and remanded for recalculation of damages. On remand, the estate sought prejudgment interest, but the county court declined to award it. The estate appealed, and Kent cross-appealed on the pleading and substantive-entitlement issues. The Nebraska Supreme Court affirmed and did not reach Kent's cross-appeal.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Adelung, 306 Neb. 646, 947 N.W.2d 269 (2020)
- County of Sarpy v. City of Gretna, 276 Neb. 520, 755 N.W.2d 376 (2008)
- Weyh v. Gottsch, 303 Neb. 280, 313-14, 929 N.W.2d 40, 63 (2019)
- deNourie & Yost Homes v. Frost, 295 Neb. 912, 893 N.W.2d 669 (2017)
- Valley Cty. Sch. Dist. 88-0005 v. Ericson State Bank, 18 Neb. App. 624, 790 N.W.2d 462 (2010)
- Albrecht v. Fettig, 27 Neb. App. 371, 932 N.W.2d 331 (2019)
- AVG Partners I v. Genesis Health Clubs, 307 Neb. 47, 948 N.W.2d 212 (2020)