SUPREME COURT OF NEBRASKA

Kenneth L. Dunbier v. J. T. Stanton, Executor, 170 Neb. 541

103 N.W.2d 797 (1960) · No. No. 34730 · Decided June 10, 1960

SUMMARY

The Supreme Court of Nebraska reviewed the denial of Kenneth L. Dunbier’s claim against his father’s estate based on an alleged oral agreement concerning farming proceeds, property, and government bonds. The court held that the evidence did not sufficiently establish the alleged contract, rejected arguments based on gift, fraud, or undue influence because those issues were not properly pleaded, and affirmed the judgment for the executor. The court also addressed the effect of accepting bonds as a settlement and the standard of review in a law action tried without a jury.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Chappell, Justice; Carter, J.; Messmore, J.; Yeager, J.; Chappell, J.; Wenke, J.; Boslaugh, J.
JURISDICTION	Nebraska
DECIDED	June 10, 1960
DOCKET	No. 34730
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kenneth L. Dunbier appealed from a judgment of the Polk County District Court, entered after a jury-waived trial, denying his claim against the estate of Tony Dunbier. The claim sought enforcement of an alleged oral contract concerning farming proceeds and government bonds.
STANDARD OF REVIEW	In a law action tried to the court without a jury, the trial court's findings have the effect of a jury verdict and will not be disturbed unless clearly wrong. The appellate court does not resolve conflicts in the evidence or weigh evidence; controverted facts are presumed resolved in favor of the successful party, and the evidence is viewed most favorably to that party with the benefit of every reasonable inference.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion
PARTIES	Kenneth L. Dunbier v. J. T. Stanton, Executor

TOPICS

creditor claims · estate litigation · contracts · evidence · standard of review

PRACTICE AREAS

probate · estate litigation · contracts · evidence · appellate procedure

QUESTIONS PRESENTED

1. Whether the executor's pleadings admitted Kenneth's ownership of all government bonds involved as a matter of law.
2. Whether Kenneth could assert on appeal that the bonds were gifts or that Tony's disposition of them resulted from incompetency, fraud, or undue influence when those issues were not raised in the pleadings or presented to the trial court.
3. Whether the district court's findings rejecting the alleged oral contract, the purported 1941 written agreement, and the claim for bond proceeds were clearly wrong.
4. Whether Kenneth's acceptance of $9,000 in government bonds constituted an accord and satisfaction of disputed rents and other obligations.
5. Whether the evidence supported recovery of additional rental proceeds for 1955 and 1956.

HOLDINGS

1. The pleadings did not establish Kenneth's ownership of all bonds as a matter of law. A general settlement or payment defense is not an implied admission that a specific cause of action existed, and admissions are limited by the context in which they are made.
2. The Supreme Court would not consider theories that were not raised by the pleadings and proof in the district court.
3. The district court's findings were not clearly wrong, and the evidence did not sufficiently establish the alleged contract or the authenticity and date of the purported written agreement.
4. The evidence supported the finding that Kenneth accepted the $9,000 in government bonds in full settlement of the rents and other obligations then disputed between him and Tony.
5. Kenneth was not entitled to recover additional rents because the evidence concerning rents, taxes, insurance, and expenses was insufficient to support a determination that any balance was due.

KEY QUOTATIONS

> *"An admission in an answer does not extend beyond the intendment of the admission as clearly disclosed by its context."* (at 803)

> *"An issue not raised by the pleadings and proof in the district court cannot be raised for the first time in the Supreme Court."* (at 804)

> *"The findings of a court in a law action in which a jury is waived have the effect of a verdict of a jury and will not be disturbed on appeal unless clearly wrong."* (at 806)

> *"The burden in the light of these rules has devolved upon the plaintiff to prove (1) an oral contract the terms of which are clear, satisfactory, and unequivocal, and (2) that his acts constituting performance were such as were referable solely to the contract sought to be enforced, and not such as might have been referable to some other or different contract."* (at 806)

FACTUAL BACKGROUND

Kenneth L. Dunbier claimed that he and his father, Tony Dunbier, entered into an oral agreement under which farming proceeds and rental income would be placed in joint government bonds for the survivor, and that Tony's estate owed him proceeds from bonds Tony allegedly converted. Kenneth relied primarily on a written instrument purportedly executed on July 19, 1941, before Kenneth entered military service, but the executor denied that Tony signed it and presented evidence that the ink used in the document was not commercially available until 1955. Kenneth received $9,000 in bonds from Tony in December 1954, which the evidence supported as a complete settlement of disputed rents and obligations. The trial court found the alleged contract and related claims insufficiently established, while recognizing Kenneth's right to $6,500 in bonds issued in the names of Tony or Kenneth.

PROCEDURAL HISTORY

Dunbier filed a claim against Tony Dunbier's estate in the Polk County County Court, which disallowed the claim. He appealed to the Polk County District Court, where the court, sitting without a jury by agreement, entered judgment for the executor and denied the claim. The district court separately ordered delivery to Dunbier of $6,500 in government bonds held in the names of Tony or Kenneth upon payment of succession taxes. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Fitch v. Martin, 83 Neb. 124, 119 N.W. 25; 84 Neb. 745, 122 N.W. 50
- Cate & Foristall v. Hutchinson, 58 Neb. 232, 78 N.W. 500
- O'Neal v. First Trust Co., 160 Neb. 469, 70 N.W.2d 466
- Giacomini v. Giacomini, 163 Neb. 798, 81 N.W.2d 194
- Lash v. Erisman, 167 Neb. 606, 94 N.W.2d 32
- Hild v. Hild, 135 Neb. 896, 284 N.W. 730
- Lewis v. Hiskey, 166 Neb. 402, 89 N.W.2d 132
- Grant v. Williams, 158 Neb. 107, 62 N.W.2d 532
- Plummer v. Fie, 167 Neb. 367, 93 N.W.2d 26
- Granger v. Byrne, 160 Neb. 10, 69 N.W.2d 293
- Reynolds v. Knott, 164 Neb. 365, 82 N.W.2d 568
- Brown v. Globe Laboratories, Inc., 165 Neb. 138, 84 N.W.2d 151

- Medelman v. Stanton-Pilger Drainage Dist., 155 Neb. 518, 52 N.W.2d 328
- Leon v. Kitchen Bros. Hotel Co., 134 Neb. 137, 277 N.W. 823
- Wert v. Equitable Life Assurance Society, 135 Neb. 654, 283 N.W. 506
- In re Estate of O'Connor, 105 Neb. 88, 179 N.W. 401
- Bank of Commerce of Louisville v. McCarty, 119 Neb. 795, 231 N.W. 34
- Marston v. Drobny, 166 Neb. 747, 90 N.W.2d 408
- In re Estate of Renter, 148 Neb. 776, 29 N.W.2d 466
- Meisinger v. Johnson, 162 Neb. 360, 76 N.W.2d 267
- Treat v. Price, 47 Neb. 875, 66 N.W. 834
- Hileman v. Maxwell, 97 Neb. 14, 149 N.W. 44
- Rohn v. Kelley, 156 Neb. 463, 56 N.W.2d 711
- Nelson v. Rasmussen, 164 Neb. 274, 82 N.W.2d 418
- Dunbier v. Rafert, 103 N.W.2d 807
