

SUPREME COURT OF NEBRASKA

Blankenau v. Landess

261 Neb. 906 (2001) (Neb. 2001) · No. S-00-255 · Decided June 1, 2001

SUMMARY

The Supreme Court of Nebraska affirmed a judgment awarding Edmund H. Blankenau restitution and possession of residential property occupied by Jackie Landess. The court held that the action was for recovery of possession of real estate, governed by a 10-year statute of limitations, and that Landess was not entitled to a separate limitations trial or a homestead exemption because she lacked a present legal right to occupy the property after termination of the lease.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, Justice; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	June 1, 2001
DOCKET	S-00-255
DISPOSITION	affirmed
PROCEDURAL POSTURE	Landess appealed from a district court judgment granting Blankenau restitution and ordering issuance of a writ restoring possession of residential property to Blankenau.
STANDARD OF REVIEW	Questions of law, including which statute of limitations applies, are reviewed independently. The point at which a limitations period begins to run is determined from the facts of each case, and the district court's determination is ordinarily not set aside unless clearly wrong.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jackie Landess v. Edmund H. Blankenau

TOPICS

- eviction
- landlord tenant
- statute of limitations
- homestead
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Blankenau's restitution action was barred by the five-year statute of limitations for written contracts or instead governed by the ten-year limitations period for recovery of real estate.
2. When the limitations period began to run on a landlord's possession action against a tenant who remains after termination of the tenancy.
3. Whether Landess was entitled to a separate trial on the statute-of-limitations issue under Neb. Rev. Stat. § 25-221.
4. Whether Landess acquired a homestead exemption or homestead right in the property despite lacking a present legal right to occupy it after termination of the lease.
5. Whether Blankenau became Landess's landlord when Custom Trophy deeded the property to him during the lease term.

HOLDINGS

1. A landlord's action under Neb. Rev. Stat. § 76-1437 to recover possession from a tenant who remains after termination of the tenancy is an action for recovery of possession of real estate, not an action on the written lease; therefore, the ten-year limitations period in § 25-202 applies rather than the five-year period in § 25-205.
2. A cause of action to recover possession from a tenant who remains after expiration or termination of a lease accrues when the lease expires or is terminated and the tenant remains in possession without the landlord's consent.
3. A separate trial was not required because Landess raised only legal questions, not a material issue of fact, concerning the statute of limitations.
4. When leased property is transferred during the unexpired lease term, the grantee succeeds to the original landlord's rights by operation of law and becomes the tenant's landlord.
5. Landess had no homestead right or exemption in the property because, when the restitution action was filed, she had no legal or equitable interest giving her a present right of occupancy or possession.

KEY QUOTATIONS

"The cause of action is not based on the contractual relationship between the parties. Rather, Blankenau's cause of action under § 76-1437 was for possession of real estate." (626 N.W.2d at 592-593)

"Landess had no interest in the subject property which would have given her a present right of occupancy or possession at the time Blankenau brought his petition for restitution." (626 N.W.2d at 595)

"For the foregoing reasons, we affirm the judgment of the district court." (626 N.W.2d at 595)

FACTUAL BACKGROUND

Custom Trophy, Inc. leased residential property to Landess in 1990 for a two-year term and deeded the property to Blankenau in 1991. After the lease expired in 1992, Blankenau allowed Landess to remain in possession as a month-to-month tenant, but in August 1999 he gave notice terminating the tenancy effective October 31, 1999 and demanded unpaid rent. Landess neither paid nor vacated, so Blankenau filed a restitution action in December 1999; Landess claimed the action was time-barred and that she had a homestead exemption.

PROCEDURAL HISTORY

Blankenau filed a petition for restitution under Neb. Rev. Stat. § 76-1441 after Landess remained in possession following termination of her month-to-month tenancy. Following a bench trial, the district court found Blankenau owned the property, rejected Landess's statute-of-limitations and homestead arguments, and ordered a writ of restitution. The Nebraska Supreme Court moved the appeal to its docket and affirmed.

DISPOSITION

affirmed

CASES CITED

- North Bend Senior Citizens Home v. Cook, 261 Neb. 500, 623 N.W.2d 681 (2001)
- Adkins v. Burlington Northern Santa Fe RR. Co., 260 Neb. 156, 615 N.W.2d 469 (2000)
- Nebraska Popcorn v. Wing, 258 Neb. 60, 602 N.W.2d 18 (1999)
- Reinke Mfg. Co. v. Hayes, 256 Neb. 442, 590 N.W.2d 380 (1999)
- Kirk Corp. v. First American Title Co., 220 Cal. App. 3d 785, 270 Cal. Rptr. 24 (1990)
- Plastone Plastic Co. v. Whitman-Webb Realty Co., 278 Ala. 95, 176 So. 2d 27 (1965)
- Watson v. Calvin, 69 Ark. App. 109, 9 S.W.3d 571 (2000)
- Murphrey v. Winslow, 70 N.C. App. 10, 318 S.E.2d 849 (1984), reversed on other grounds, 313 N.C. 320, 327 S.E.2d 878 (1985)
- Baltensperger v. Wellensiek, 250 Neb. 938, 554 N.W.2d 137 (1996)
- Fisher v. Kellogg, 128 Neb. 248, 258 N.W. 404 (1935)
- Mainelli v. Neuhaus, 157 Neb. 392, 59 N.W.2d 607 (1953)