

SUPREME COURT OF NORTH DAKOTA

Zundel v. Zundel

2020 ND 150 (2020) · No. 20190334 · Decided June 29, 2020

SUMMARY

The North Dakota Supreme Court affirmed a district court judgment declaring a bill of transfer void because Stephen Zundel obtained his father’s signature through undue influence. The court held that the district court’s findings regarding a confidential relationship, undue influence, and the validity of the transfer were not clearly erroneous. It also declined to review an unpreserved judicial-bias claim, rejected the evidentiary challenge, and upheld the quashing of a post-trial subpoena.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                              |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of North Dakota                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Daniel J. Crothers; Jerod E. Tufte; Lisa Fair McEvers; Gerald W. VandeWalle; Jon J. Jensen, Chief Justice                                                                                                                                                                                    |
| JURISDICTION          | North Dakota                                                                                                                                                                                                                                                                                 |
| DECIDED               | June 29, 2020                                                                                                                                                                                                                                                                                |
| DOCKET                | 20190334                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Stephen Zundel appealed from a district court judgment declaring a bill of transfer void because it resulted from undue influence and was not properly accepted. He also challenged the admission of statements, the quashing of a post-trial subpoena, and alleged judicial bias.           |
| STANDARD OF REVIEW    | The court reviewed the district court's factual findings after a bench trial under the clearly erroneous standard; evidentiary rulings and the decision to quash the subpoena were reviewed for abuse of discretion. Issues not raised below were not reviewed for the first time on appeal. |
| PRECEDENTIAL VALUE    | Published North Dakota Supreme Court opinion                                                                                                                                                                                                                                                 |
| PARTIES               | Stephen Zundel v. Loren Zundel, Richard Zundel                                                                                                                                                                                                                                               |

TOPICS

- undue influence
- estate litigation
- evidence
- preservation of error
- appellate procedure

## PRACTICE AREAS

Probate and estate litigation

Evidence

Civil procedure

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that the bill of transfer resulted from undue influence.
2. Whether the district court improperly admitted Edwin Zundel's statements under the state-of-mind exception to the hearsay rule.
3. Whether the district court abused its discretion by quashing Stephen Zundel's post-trial subpoena to the nursing home.
4. Whether the alleged judicial-bias issue could be raised for the first time on appeal.

## HOLDINGS

1. An alleged judicial-bias issue not raised in the district court will not be considered for the first time on appeal.
2. The district court did not clearly err in finding that the bill of transfer was void because of Stephen Zundel's undue influence over Edwin Zundel.
3. Even assuming the district court improperly considered the challenged hearsay statements, their admission did not require reversal because other competent evidence independently supported the judgment.
4. The district court did not abuse its discretion by quashing Stephen's post-trial subpoena to the nursing home.

## KEY QUOTATIONS

*“A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, there is no evidence to support it, or if . . . on the entire evidence [this Court] is left with a definite and firm conviction a mistake has been made.”* (¶ 10)

*“we do ‘not reweigh evidence or reassess witness credibility when the evidence supports the court’s findings.’”* (¶ 10)

*“In the trial of a nonjury case, it is virtually impossible for a trial judge to commit reversible error by receiving incompetent evidence, whether objected to or not.”* (¶ 29)

## FACTUAL BACKGROUND

Edwin Zundel lived with Stephen Zundel for years, and Stephen assisted him with transportation, appointments, errands, finances, and management of his affairs. After Edwin's health declined and he moved to a nursing home, Stephen proposed and obtained Edwin's signature on a bill of transfer granting Stephen extensive farm and personal property, including vehicles, tractors, tools, and essentially anything remaining at the farm. The district court found Edwin susceptible to influence, Stephen had the opportunity and disposition to exert influence, and the transfer resulted from that influence.

## PROCEDURAL HISTORY

Stephen Zundel sued his brothers seeking possession of personal property covered by a May 2013 bill of transfer. After a bench trial, the district court found the bill of transfer invalid because Stephen obtained Edwin Zundel's signature through undue influence and because the document was not signed by a notary. After judgment, the district court quashed Stephen's subpoena to a nursing home seeking records concerning Edwin Zundel. The Supreme Court of North Dakota affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Molitor v. Molitor, 2006 ND 163, ¶ 12, 718 N.W.2d 13
- Wenzel v. Wenzel, 469 N.W.2d 156, 158 (N.D. 1991)
- Lucas v. Riverside Park Condos. Unit Owners Ass'n, 2009 ND 217, ¶ 12, 776 N.W.2d 801
- Risky v. Risky, 2018 ND 214, ¶¶ 8, 12, 14-15, 917 N.W.2d 488
- Erickson v. Olsen, 2014 ND 66, ¶ 19, 844 N.W.2d 585
- Estate of Mickelson, 477 N.W.2d 247, 250 (N.D. 1991)
- Wheeler v. Southport Seven Planned Unit Dev., 2012 ND 201, ¶ 23, 821 N.W.2d 746
- Prchal v. Prchal, 2011 ND 62, ¶ 11, 795 N.W.2d 693
- In re Estate of Harris, 2017 ND 35, ¶ 19, 890 N.W.2d 561
- In re Estate of Bartelson, 2015 ND 147, ¶ 16, 864 N.W.2d 441
- In re Estate of Vizenor, 2014 ND 143, ¶¶ 26-27, 851 N.W.2d 119
- Erickson v. Brown, 2008 ND 57, ¶ 27, 747 N.W.2d 34
- State v. Duchene, 2007 ND 31, ¶ 10, 727 N.W.2d 769
- Schumacker v. Schumacker, 2011 ND 75, ¶ 15, 796 N.W.2d 636
- Spitzer v. Bartelson, 2009 ND 179, ¶ 12, 773 N.W.2d 798
- In re J.S.L., 2009 ND 43, ¶ 18, 763 N.W.2d 783
- State v. Schmidkunz, 2006 ND 192, ¶ 15, 721 N.W.2d 387
- Tallackson Potato Co., Inc. v. MTK Potato Co., 278 N.W.2d 417 (N.D. 1979)
- Investors Title Ins. Co. v. Herzig, 2010 ND 169, ¶ 38, 788 N.W.2d 312
- Martin v. Trinity Hosp., 2008 ND 176, ¶ 17, 755 N.W.2d 900
- Zundel v. Zundel, 2017 ND 217, 901 N.W.2d 731