

NEBRASKA SUPREME COURT

Alexander Lanham v. BNSF Railway Company

306 Neb. 124 (2020) · No. No. S-19-114 · Decided June 12, 2020

SUMMARY

The Nebraska Supreme Court issued a supplemental opinion addressing Alexander Lanham’s motion for rehearing in the underlying personal jurisdiction case against BNSF Railway Company. The court overruled the motion but modified the original opinion to correct statutory citations applicable to for-profit corporations, without changing the outcome.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	June 12, 2020
DOCKET	No. S-19-114
DISPOSITION	other
PROCEDURAL POSTURE	Supplemental opinion issued on the appellant's motion for rehearing concerning the court's prior opinion.
PRECEDENTIAL VALUE	Published
PARTIES	Alexander Lanham v. BNSF Railway Company

TOPICS

- appellate procedure
- statutory interpretation
- corporate law
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Corporate law
- Statutory interpretation

QUESTIONS PRESENTED

- Whether the appellant's motion for rehearing had substantive merit.
- Whether the prior opinion should be modified to replace the citation to the nonprofit-corporation statute with the substantially identical statute applicable to for-profit corporations.

HOLDINGS

1. The motion for rehearing lacked substantive merit and was overruled.
2. The former opinion was modified to substitute Neb. Rev. Stat. § 21-2,209 (Cum. Supp. 2018), the statute applicable to for-profit corporations, for Neb. Rev. Stat. § 21-19,152 (Reissue 2012), the statute applicable to nonprofit corporations.

KEY QUOTATIONS

“This had no effect upon the outcome of the appeal, as the two statutes are substantially identical.” (125)

“The remainder of the opinion shall remain unmodified.” (126)

FACTUAL BACKGROUND

The supplemental opinion concerns the statutory provision governing the registered office and registered agent that a foreign corporation authorized to transact business in Nebraska must maintain. The prior opinion and the district court had cited a statute applicable to nonprofit corporations, although BNSF Railway Company is a for-profit corporation. The court concluded that the citation error did not affect the outcome because the applicable statutes were substantially identical.

PROCEDURAL HISTORY

The Nebraska Supreme Court previously decided the appeal in *Lanham v. BNSF Railway Co.*, 305 Neb. 124, 939 N.W.2d 363 (2020). On rehearing, the court found no substantive merit in the motion but agreed that the prior opinion used an incorrect statutory citation addressing nonprofit corporations rather than for-profit corporations. The court modified the former opinion to substitute the correct statutory citation and overruled the motion for rehearing.

DISPOSITION

other

CASES CITED

- *Lanham v. BNSF Railway Co.*, 305 Neb. 124, 939 N.W.2d 363 (2020)

OPINION

PER CURIAM.

Nebraska Supreme Court Online Library www.nebraska.gov/apps-courts-epub/ 07/02/2020 08:11 AM CDT - 124 - Nebraska Supreme Court Advance Sheets 306 Nebraska Reports LANHAM v. BNSF RAILWAY CO. Cite as 306 Neb. 124 Alexander Lanham, appellant and cross-appellee, v. BNSF Railway Company, appellee and cross-appellant. ___ N.W.2d ___ Filed June 12, 2020. No. S-19-114. supplemental opinion Appeal from the District Court for Lancaster County: Robert R. Otte, Judge.

Former opinion modified. Motion for rehearing overruled. Corey L. Stull and Jeanette Stull, of Atwood, Holsten, Brown, Deaver & Spier, P.C., L.L.O., and Christopher H. Leach, of Hubbell Law Firm, L.L.C., for appellant. Nichole S. Bogen, of Lamson, Dugan & Murray, L.L.P., Wayne L. Robbins, Jr., of Robbins Travis, P.L.L.C., and Andrew S. Tulumello, of Gibson, Dunn & Crutcher, L.L.P., for appellee.

Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, Papik, and Freudenberg, JJ. Per Curiam. This case is before us on a motion for rehearing filed by the appellant and cross-appellee, Alexander Lanham, concerning our opinion in *Lanham v. BNSF Railway Co.* 1 While 1 *Lanham v. BNSF Railway Co.*, 305 Neb. 124, 939 N.W.2d 363 (2020). - 125 - Nebraska Supreme Court Advance Sheets 306 Nebraska Reports LANHAM v. BNSF RAILWAY CO. Cite as 306 Neb. 124 there is no substantive merit to the motion, Lanham correctly points out that a statutory citation, also used by the district court, addressed nonprofit corporations rather than for-profit corporations such as BNSF Railway Company.

This had no effect upon the outcome of the appeal, as the two statutes are substantially identical. We overrule the motion, but we modify the original opinion to substitute the correct citation as follows: In syllabus point 11, 2 we withdraw the reference to “Neb. Rev. Stat. § 21-19,152 (Reissue 2012)” and substitute “Neb. Rev. Stat. § 21-2,209 (Cum. Supp. 2018).” We make two changes in the background section.

We withdraw the phrase “Pursuant to Neb. Rev. Stat. § 21-19,152 (Reissue 2012),” in the fourth sentence of the third paragraph. 3 In the first sentence of the fifth paragraph, we add “Neb. Rev. Stat.” before “§ 21-19,152” and “(Reissue 2012)” after the statute. 4 We also modify the analysis section in five respects under the subheading “Consent by Registration.” In the eighth paragraph, 5 after the first sentence, we add “Because § 21-19,152 applies to nonprofit corporations, the district court should have cited to Neb. Rev. Stat. § 21-2,209 (Cum.

Supp. 2018), a nearly identical statute applicable to for-profit corporations like BNSF.” We withdraw the ninth paragraph 6 and substitute: Section 21-2,209 provides:... Each foreign corporation authorized to trans- act business in this state must continuously maintain in this state: 2 Id. at 125, 939 N.W.2d at 363. 3 Id. at 126, 939 N.W.2d at 366. 4 Id. at 127, 939 N.W.2d at 366.

5 Id. at 133, 939 N.W.2d at 370. 6 Id. at 133-34, 939 N.W.2d at 370. - 126 - Nebraska Supreme Court Advance Sheets 306 Nebraska Reports LANHAM v. BNSF RAILWAY CO. Cite as 306 Neb. 124 (1) A registered office that may be the same as any of its places of business; and (2) A registered agent, who may be: (i) An individual who resides in this state and whose business office is identical with the registered office; (ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or (iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

In the 10th paragraph, 7 we substitute “21-2,209” for “21-19,152” in the first and third sentences. Finally, in the second sentence of the last paragraph of the subsection, 8 we substitute “21-2,209” for “21-19,152.” The remainder of the opinion shall remain unmodified. Former opinion modified. Motion for rehearing overruled. 7 Id. at 134, 939 N.W.2d at 370.

8 Id. at 135, 939 N.W.2d at 371.