

NEBRASKA SUPREME COURT

Alexander Lanham v. BNSF Railway Company

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