

NORTH DAKOTA SUPREME COURT

Kuntz v. State

2019 ND 46 (N.D. 2019) · No. No. 20180135 · Decided February 21, 2019

SUMMARY

The North Dakota Supreme Court affirmed in part, reversed in part, and remanded a judgment dismissing Riley S. Kuntz’s claims against the State and related officials. The court held that Kuntz sufficiently pleaded a civil action under North Dakota’s open records law based on an alleged unreasonable delay in providing a memorandum of understanding, while affirming dismissal of his other claims and denial of his motions for default judgment, sanctions, and leave to amend.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Jerod E. Tufte, Justice; Jerod E. Tufte; Daniel J. Crothers; Lisa Fair McEvers; Jon J. Jensen; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	February 21, 2019
DOCKET	No. 20180135
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kuntz appealed from a district court judgment granting the State's motion for judgment on the pleadings and dismissing his claims with prejudice. He also challenged the denial of motions for default judgment, sanctions, and leave to amend.
STANDARD OF REVIEW	Judgment on the pleadings under N.D.R.Civ.P. 12(c) is reviewed de novo. Pleadings are viewed in the light most favorable to the pleading party and allegations are taken as true; dismissal is proper only when it is certain that no set of facts could support relief. Denials of default judgment, sanctions, and leave to amend are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Riley S. Kuntz v. State of North Dakota, Bureau of Criminal Investigation, Criminal Justice Information Sharing Director, Department of Transportation, Attorney General Wayne Stenehjem, in his official and individual capacities, Deputy Director of BCI Lonnie

Grabowska, in his official and individual capacities, Liz Brocker, in her official and individual capacities, Mary Kluzak, in her official and individual capacities

TOPICS

open government public records motion for judgment on the pleadings default judgment motion to amend

PRACTICE AREAS

civil procedure open government public records civil rights statutory interpretation

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Kuntz's motion for default judgment based on the State's service and filing of its answer.
2. Whether the district court abused its discretion by denying sanctions against the State's counsel.
3. Whether Kuntz sufficiently pleaded a civil action under N.D.C.C. § 44-04-21.2 for an alleged unreasonable delay in responding to his July 2017 open-records requests.
4. Whether Kuntz stated claims under 42 U.S.C. §§ 1983, 1985, 1986, and 1988 based on alleged violations of North Dakota's open-records law.
5. Whether Kuntz stated claims for fraud, constructive fraud, or deceit and whether leave to amend was properly denied.
6. Whether the district court properly declined to address Kuntz's requested declaratory relief.

HOLDINGS

1. An affidavit of service by mail signed and filed with the court establishes when the referenced documents were mailed and served. Including an unsigned copy of the affidavit with the served documents does not invalidate service.
2. The district court did not abuse its discretion by denying default judgment where the State had appeared, timely answered, and demonstrated its intent to defend.
3. The district court did not abuse its discretion by denying sanctions against the State's counsel.
4. A civil action under N.D.C.C. § 44-04-21.2 remains available after an allegedly unreasonable delay if the requester alleges prejudice or harm caused by the delay; later disclosure alone does not necessarily correct the violation.
5. Claims under 42 U.S.C. §§ 1983, 1985, 1986, and 1988 were properly dismissed because the alleged deprivation was based solely on violations of North Dakota's open-records law and the defendants were the State, state agencies, or officials sued in their official capacities.
6. The district court properly dismissed the fraud and constructive-fraud claims and properly denied leave to amend to assert deceit because the claims lacked a contractual or fiduciary basis where required and the proposed deceit allegations did not satisfy Rule 9(b)'s particularity requirement.

7. The court declined to decide the merits of Kuntz's requested declaratory relief because the open-records claim was being remanded and any ruling at that stage would be advisory or premature.

KEY QUOTATIONS

“For the remedies in N.D.C.C. § 44-04-21.2(1) to be unavailable, however, the plain language of N.D.C.C. § 44-04-21.2(3) requires that a violation be “corrected” and that no person be “prejudiced or harmed” by the violation.” (¶ 33)

“In other words, for a requester to access this section’s remedies when an unreasonable delay in providing records causes the requester prejudice or harm, the violation cannot be corrected by merely providing the records.” (¶ 33)

“To the extent Haugrud, 2017 ND 262, ¶ 14, 903 N.W.2d 537, suggests N.D.R.Civ.P. 8(a)(1) applies, we clarify that a deceit claim requires the same degree of specificity in pleadings as a claim for fraud under N.D.R.Civ.P. 9(b).” (¶ 51)

FACTUAL BACKGROUND

Kuntz submitted several open-records requests to North Dakota agencies in 2016 and 2017 seeking an MOU concerning searches of North Dakota driver-license and facial-recognition databases. The agencies requested clarification or payment, and the State ultimately mailed an MOU to Kuntz after he served his complaint. Kuntz alleged that the State had unreasonably delayed or denied access to the records and that the delay caused harm or damages.

PROCEDURAL HISTORY

Kuntz filed an action alleging violations of North Dakota's open records law, federal civil-rights violations, fraud and deceit, and entitlement to declaratory relief and attorney's fees. After the State provided an MOU following service of the complaint, the district court denied Kuntz's motions for default judgment and sanctions, granted judgment on the pleadings, dismissed the claims with prejudice, and denied leave to amend. The North Dakota Supreme Court affirmed in part, reversed dismissal of the open-records claim concerning the July 2017 requests, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings limited to alleged violations of N.D.C.C. § 44-04-18 concerning Kuntz's July 2017 open-records requests, and, if necessary, to address requests for declaratory relief relating to any violations established.

CASES CITED

- Bell v. State, 1998 ND 35, 575 N.W.2d 211

- Koenig v. State, 2018 ND 59, 907 N.W.2d 344
- Filler v. Bragg, 1997 ND 24, 559 N.W.2d 225
- McColl Farms v. Pflaum, 2013 ND 169, 837 N.W.2d 359
- Heinle v. Heinle, 2010 ND 5, 777 N.W.2d 590
- Nelson v. McAlester Fuel Co., 2017 ND 49, 891 N.W.2d 126
- Tibert v. Minto Grain, LLC, 2004 ND 133, 682 N.W.2d 294
- Zundel v. Zundel, 2017 ND 217, 901 N.W.2d 731
- Riemers v. City of Grand Forks, 2006 ND 224, 723 N.W.2d 518
- Werlinger v. Champion Healthcare Corp., 1999 ND 173, 598 N.W.2d 820
- Sorum v. Dalrymple, 2014 ND 233, 857 N.W.2d 96
- Sauby v. City of Fargo, 2008 ND 60, 747 N.W.2d 65
- DeForest v. N.D. Dep't of Transp., 2018 ND 224, 918 N.W.2d 43
- State v. Stegall, 2013 ND 49, 828 N.W.2d 526
- Mertz v. City of Elgin, 2011 ND 148, 800 N.W.2d 710
- Indus. Contractors, Inc. v. Taylor, 2017 ND 183, 899 N.W.2d 680
- Wheeler v. Burgum, 2018 ND 109, 910 N.W.2d 845
- Perry Center, Inc. v. Heitkamp, 1998 ND 78, 576 N.W.2d 505
- Jensen v. Zuern, 517 N.W.2d 118 (N.D. 1994)
- Livingood v. Meece, 477 N.W.2d 183 (N.D. 1991)
- Heart River Partners v. Goetzfried, 2005 ND 149, 703 N.W.2d 330
- Bakke v. Magi-Touch Carpet One Floor & Home, Inc., 2018 ND 273, 920 N.W.2d 726
- Johnson v. Hovland, 2011 ND 64, 795 N.W.2d 294
- Darby v. Swenson Inc., 2009 ND 103, 767 N.W.2d 147
- Land Office Co. v. Clapp-Thomssen Co., 442 N.W.2d 401 (N.D. 1989)
- Nesvig v. Nesvig, 2004 ND 37, 676 N.W.2d 73
- Haugrud v. Craig, 2017 ND 262, 903 N.W.2d 537
- Miller Enterprises, Inc. v. Dog N' Cat Pet Ctrs. of Am., 447 N.W.2d 639 (N.D. 1989)
- BJC Health Sys. v. Columbia Cas. Co., 478 F.3d 908 (8th Cir. 2007)
- Thimjon Farms P'ship v. First Int'l Bank & Trust, 2013 ND 160, 837 N.W.2d 327
- Denault v. State, 2017 ND 167, 898 N.W.2d 452
- Richland Cty. Water Res. Bd. v. Pribbernow, 442 N.W.2d 916 (N.D. 1989)
- Nationwide Mut. Ins. Cos. v. Lagodinski, 2004 ND 147, 683 N.W.2d 903
- Nodak Mut. Ins. Co. v. Wamsley, 2004 ND 174, 687 N.W.2d 226