

SUPREME COURT OF NEBRASKA

Jacobson v. Shresta

288 Neb. 615 (2014) · No. No. S-11-438 · Decided July 25, 2014

SUMMARY

The Nebraska Supreme Court held that a party in district court does not waive the constitutional right to a jury trial merely by failing to object before a court grants a motion for a bifurcated bench trial. The court nevertheless concluded that the plaintiffs had no right to a jury determination of whether the defendant physicians were employees of a political subdivision for purposes of the Political Subdivisions Tort Claims Act. The court affirmed the Nebraska Court of Appeals’ judgment.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Heavican, C.J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	July 25, 2014
DOCKET	No. S-11-438
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for further review of the Nebraska Court of Appeals' decision affirming the Sheridan County District Court's dismissal of the Jacobsons' wrongful death and medical malpractice action after a bifurcated bench trial determined that the defendants were employees of a political subdivision.
STANDARD OF REVIEW	Statutory interpretation is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Michael L. Jacobson, Special Administrator of the Estate of Virginia A. Jacobson, deceased, Myron J. Jacobson v. Sherry K. Shresta, M.D., Gaston Cornu-Labat, M.D.

TOPICS

- civil procedure
- municipal liability
- constitutional law
- appellate procedure
- standard of review

PRACTICE AREAS

civil procedure

constitutional law

torts

municipal law

appellate procedure

QUESTIONS PRESENTED

1. Whether a party in district court waives the constitutional right to a jury trial merely by failing to object before the court grants a motion for a bifurcated bench trial.
2. Whether the plaintiffs were entitled to a jury trial on the issue of whether the defendants were employees of a political subdivision for purposes of governmental immunity under the Political Subdivisions Tort Claims Act.

HOLDINGS

1. A district-court party waives the constitutional right to a jury trial only when the court determines that one of the three waiver circumstances specified in Neb. Rev. Stat. § 25-1126 applies. Mere failure to object before a defendant's request for a bench trial on a bifurcated issue is not, by itself, a statutory waiver.
2. A party is not entitled to a jury trial on whether a defendant is an employee of a political subdivision because a jury trial is not one of the terms by which the Legislature waived governmental immunity under the Political Subdivisions Tort Claims Act.

KEY QUOTATIONS

“In sum, in district court, a party’s waiver of a jury trial occurs only if a court determines that one of three circumstances under § 25-1126 applies.” (623)

“Because a jury trial is not one of the terms of its waiver of governmental immunity under PSTCA, a party is not entitled to a jury trial on its claim that a defendant is not a political subdivision employee.” (625)

FACTUAL BACKGROUND

Virginia A. Jacobson was admitted to Gordon Memorial Hospital after choking while eating meat. During an esophagogastroscope performed by Gaston Cornu-Labat, M.D., she coded; meat was suctioned from her throat, and an x ray showed aspiration pneumonia. After three days under the care of Cornu-Labat and Sherry K. Shresta, M.D., Virginia died from complications. Her husband and estate representative sued, and the defendants' employment status became dispositive because the hospital was stipulated to be a political subdivision and the claim was not timely presented under the Political Subdivisions Tort Claims Act.

PROCEDURAL HISTORY

The Jacobsons filed a wrongful death action against Shresta and Cornu-Labat in the Sheridan County District Court. The parties stipulated that Gordon Memorial Hospital was a political subdivision and that the Jacobsons had not complied with the one-year claim-presentment limitation under the Political Subdivisions Tort Claims Act. The district court bifurcated the employment issue, denied a jury trial on that issue, found the defendants were hospital employees, and dismissed the complaint. The Nebraska Court of Appeals affirmed, reasoning that the Jacobsons had waived their jury-trial right. The Nebraska Supreme Court rejected that waiver reasoning but

affirmed because no jury-trial right existed for determining whether the defendants were political-subdivision employees.

DISPOSITION

affirmed

CASES CITED

- In re Interest of Eden K. & Allison L., 14 Neb. Ct. App. 867, 717 N.W.2d 507 (2006)
- ML Manager v. Jensen, 287 Neb. 171, 842 N.W.2d 566 (2014)
- State v. Kennedy, 224 Neb. 164, 396 N.W.2d 722 (1986)
- State ex rel. Simpson v. Vondrasek, 203 Neb. 693, 279 N.W.2d 860 (1979)
- Eihusen v. Eihusen, 272 Neb. 462, 723 N.W.2d 60 (2006)
- Doe v. Golnick, 251 Neb. 184, 556 N.W.2d 20 (1996)
- Starlin v. Burlington Northern, Inc., 193 Neb. 619, 228 N.W.2d 597 (1975)
- Storm v. Christenson, 130 Neb. 86, 263 N.W. 896 (1936)
- State ex rel. Simpson v. Vondrasek, 203 Neb. 693, 279 N.W.2d 860 (1979)
- State v. Miller, 226 Neb. 576, 412 N.W.2d 849 (1987)
- State v. Wiltshire, 241 Neb. 817, 491 N.W.2d 324 (1992)
- State v. Louthan, 257 Neb. 174, 595 N.W.2d 917 (1999)
- State v. Bishop, 224 Neb. 522, 399 N.W.2d 271 (1987)
- MFA Ins. Companies v. Mendelhall, 205 Neb. 430, 288 N.W.2d 270 (1980)
- In re Estate of Bose, 136 Neb. 156, 285 N.W. 319 (1939)
- Segear v. Westcott, 83 Neb. 515, 120 N.W. 170 (1909)
- Helming v. Forrester, 87 Neb. 438, 127 N.W. 373 (1910)
- Criswell v. Criswell, 101 Neb. 349, 163 N.W. 302 (1917)
- Mavity v. Stover, 68 Neb. 602, 94 N.W. 834 (1903)
- Davis v. Snyder, 45 Neb. 415, 63 N.W. 789 (1895)
- McKinney v. County of Cass, 180 Neb. 685, 144 N.W.2d 416 (1966)
- Schumacher v. Crane-Churchill Co., 66 Neb. 440, 92 N.W. 609 (1902)
- Lett v. Hammond, 59 Neb. 339, 80 N.W. 1042 (1899)
- Cohill v. Nationwide Auto Service, 16 Cal. App. 4th 696, 19 Cal. Rptr. 2d 924 (1993)
- Bronsen v. Dawes County, 272 Neb. 320, 722 N.W.2d 17 (2006)
- Hatcher v. Bellevue Vol. Fire Dept., 262 Neb. 23, 628 N.W.2d 685 (2001)
- Lehman v. Nakshian, 453 U.S. 156, 101 S. Ct. 2698, 69 L. Ed. 2d 548 (1981)
- Wilson v. Big Sandy Health Care, Inc., 576 F.3d 329 (6th Cir. 2009)
- Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007)
- Brown v. City of Omaha, 183 Neb. 430, 160 N.W.2d 805 (1968)

- Britton v. City of Crawford, 282 Neb. 374, 803 N.W.2d 508 (2011)

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