

SUPREME COURT OF NORTH DAKOTA

Smithberg v. Jacobson

2020 ND 46 (N.D. 2020) · No. 20190369 · Decided February 27, 2020

SUMMARY

The North Dakota Supreme Court granted in part Ronald Smithberg’s petition for a supervisory writ after the district court denied his request for a jury trial on remand. The court held that when a case is reversed and remanded for trial without limitation, a party who previously stipulated to waive a jury may demand a jury on remand unless the stipulation covered future trials or the right is otherwise limited by law. The court denied requests for reassignment of the judge and entry of a scheduling order.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte; Daniel J. Crothers; Lisa Fair McEvers; Dale V. Sandstrom, S.J.; Jon J. Jensen, C.J.
JURISDICTION	North Dakota
DECIDED	February 27, 2020
DOCKET	20190369
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Ronald Smithberg petitioned for a supervisory writ after the district court denied his request for a jury trial on remand. He also sought assignment of a new judge and entry of a scheduling order.
STANDARD OF REVIEW	Supervisory-writ relief is discretionary and is exercised case by case. The Supreme Court issues supervisory writs rarely and cautiously, only to rectify error and prevent injustice in extraordinary cases where no adequate alternative remedy exists.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Ronald Smithberg v. Honorable Paul Jacobson, Judge of the District Court, Northwest Judicial District, Gary Smithberg, James Smithberg, Smithberg Brothers, Inc.

TOPICS

writ of certiorari

appellate procedure

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PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether a party who stipulated to waive a jury trial before the original trial may demand a jury trial after the case is reversed and remanded for a trial without limitation.
2. Whether the Supreme Court should exercise supervisory jurisdiction to require the district court to assign a new judge and enter a scheduling order.

HOLDINGS

1. When an appellate court reverses and remands a case for a trial without limitation, a party who stipulated to waive the right to a jury trial before the original trial may demand a jury trial on remand, unless the parties intended the stipulation to apply to future trials or the right is otherwise limited by law.
2. The Supreme Court declined to exercise supervisory jurisdiction to direct reassignment of the district judge or entry of a scheduling order.

KEY QUOTATIONS

“We conclude that when a case is reversed and remanded for a trial without limitation, a party who stipulated to waive the right to a jury trial before the original trial may demand a jury trial on remand, unless the parties intended their stipulation to apply to any future trials or the right is otherwise limited by law.” (¶ 17)

“We exercise our supervisory jurisdiction and instruct the district court to schedule a jury trial.” (¶ 21)

FACTUAL BACKGROUND

Ronald, Gary, and James Smithberg were shareholders in Smithberg Brothers, Inc. Ronald sued his brothers and the corporation for damages and sought to require a purchase of his shares. Although Ronald initially demanded a jury trial, the parties stipulated to waive a jury and proceed with a bench trial to obtain an earlier trial date. After the Supreme Court reversed summary judgment dismissing Ronald's damages claims and remanded without limiting the type of trial, Ronald demanded a jury trial on remand, but the district court ordered another bench trial.

PROCEDURAL HISTORY

Smithberg initially demanded a jury trial in an action against his brothers and their corporation. The parties later stipulated to waive a jury trial, and the district court conducted a bench trial after granting summary judgment on Smithberg's damages claims. The North Dakota Supreme Court reversed the summary judgment and remanded for further proceedings. On remand, the district court ordered another bench trial, concluding that Smithberg's prior waiver remained effective and that it had discretion to allow a jury. The Supreme Court granted supervisory relief in part, directing a jury trial, but denied relief concerning reassignment of the judge and entry of a scheduling order.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court was instructed to schedule a jury trial. The requests to assign a new judge and enter a scheduling order were denied.

CASES CITED

- Smithberg v. Smithberg, 2019 ND 195, 931 N.W.2d 211
- Plains Trucking, LLC v. Cresap, 2019 ND 226, 932 N.W.2d 541
- State v. Haskell, 2017 ND 252, 902 N.W.2d 772
- Riemers v. Eslinger, 2010 ND 76, 781 N.W.2d 632
- Barry v. Truax, 13 N.D. 131, 99 N.W. 769 (1904)
- Roth v. Hyer, 142 F.2d 227 (5th Cir. 1944)
- United States v. Lee, 539 F.2d 606 (6th Cir. 1976)
- F.M. Davies & Co. v. Porter, 248 F. 397 (8th Cir. 1918)
- Burnham v. N. Chicago St. Ry. Co., 88 F. 627 (7th Cir. 1898)
- Osgood v. Skinner, 57 N.E. 1041 (Ill. 1900)
- Nedrow v. Michigan-Wisconsin Pipe Line Co., 70 N.W.2d 843 (Iowa 1955)
- In re Hulcher Servs., Inc., 568 S.W.3d 188 (Tex. Ct. App. 2018)
- Tesky v. Tesky, 327 N.W.2d 706 (Wis. 1983)
- Seymour v. Swart, 695 P.2d 509 (Okla. 1985)
- Wilson v. Horsley, 974 P.2d 316 (Wash. 1999)
- Rath v. Rath, 2018 ND 98, 909 N.W.2d 666

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