

SUPREME COURT OF NORTH DAKOTA

McCormick v. Fredericks

2020 ND 161 (2020) · No. No. 20190254 · Decided July 22, 2020

SUMMARY

The North Dakota Supreme Court affirmed in part, reversed in part, and remanded a judgment arising from disputes among members and related entities of Native Energy Construction, LLC. The court upheld the district court’s jurisdiction, jury instructions, corporate-witness ruling, exemplary-damages award, attorney-disqualification ruling, and several summary-judgment rulings, but reversed the award concerning distributions received by Fredericks because the amount was disputed and the distributions were obligations of Native Energy rather than Fredericks individually. The court also remanded the denial of a request for judicial supervision of Native Energy’s winding up because the district court did not explain its decision.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers; Lisa Fair McEvers; Gerald W. VandeWalle; Jerod E. Tufte; Jon J. Jensen, Chief Justice
JURISDICTION	North Dakota
DECIDED	July 22, 2020
DOCKET	No. 20190254
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fredericks appealed a judgment awarding more than \$1 million in damages for breach of fiduciary duties and fraud. McCormick and Northern Improvement cross-appealed the denial of their motion for judicial supervision of Native Energy's winding up.
STANDARD OF REVIEW	Subject-matter jurisdiction was reviewed de novo when jurisdictional facts were undisputed. Jury instructions were reviewed as a whole for whether they correctly advised the jury of the law, with harmless-error review for any instructional error. Witness sequestration and attorney-disqualification decisions were reviewed for abuse of discretion. Summary judgment was reviewed de novo on the entire record, viewing evidence in the light most favorable to the nonmoving party. Judicial supervision of winding up was treated as discretionary.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Terrance Fredericks v. McCormick, Inc., Native Energy Construction, LLC, Northern Improvement Company

TOPICS

limited liability companies fiduciary duty tribal jurisdiction appellate procedure evidence

PRACTICE AREAS

limited liability company law business litigation tribal jurisdiction fiduciary duty appellate procedure

QUESTIONS PRESENTED

1. Whether the North Dakota district court had subject-matter jurisdiction over Fredericks's counterclaim concerning the management fee or whether jurisdiction belonged exclusively to the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation.
2. Whether the district court erred by refusing to give contract-law jury instructions concerning the management fee.
3. Whether the district court abused its discretion by allowing McCormick and Northern Improvement to have separate corporate representatives present during trial despite a sequestration request.
4. Whether partial summary judgment was proper concerning the amount and recipient of distributions received by Fredericks.
5. Whether the exemplary-damages award was erroneous.
6. Whether the district court abused its discretion by refusing to disqualify the Vogel law firm.
7. Whether the final judgment properly characterized the fraud findings and awarded compensatory damages to Native Energy and McCormick.
8. Whether the district court erred by denying McCormick's motion for judicial supervision of Native Energy's winding up without explanation.

HOLDINGS

1. The North Dakota district court had jurisdiction over Fredericks's counterclaims. The claims arose from his ownership interest in a North Dakota limited liability company, and Fredericks failed to establish that the Montana exception for consensual relationships vested the tribal court with exclusive jurisdiction.
2. The district court did not err by declining to give contract-law instructions because the central claims tried to the jury concerned alleged breaches of fiduciary duties, and the instructions as a whole adequately informed the jury of the applicable law.
3. The district court did not abuse its discretion by allowing each corporate plaintiff to have a designated representative present during trial under N.D.R.Ev. 615(b).

4. The district court erred by granting partial summary judgment concerning the amount of Fredericks's distributions because the amount was genuinely disputed. It also erred by ordering Fredericks individually to pay McCormick, because under the governing statute McCormick's entitlement was against Native Energy as a creditor of the limited liability company.
5. The district court did not abuse its discretion by refusing to disqualify Vogel from representing McCormick.
6. The district court's unexplained denial of McCormick's motion for judicial supervision of Native Energy's winding up had to be reversed and remanded because the appellate court could not determine whether the court properly applied the good-cause requirement.

KEY QUOTATIONS

“On appeal, we review jury instructions as a whole, and if they correctly advise the jury of the law, they are sufficient.” (¶ 16)

“When Fredericks received his distributions from Native Energy, McCormick also became entitled to distributions and had the status of a creditor of Native Energy, not Fredericks individually.” (¶ 35)

“This Court cannot perform its appellate function if we are unable to understand the rationale underlying the district court’s decision.” (¶ 57)

FACTUAL BACKGROUND

McCormick, Inc. and Terrance Fredericks formed Native Energy Construction, LLC, with Fredericks owning 51 percent and McCormick owning 49 percent. Fredericks served as president, while McCormick and Northern Improvement provided management services for a five-percent fee on Native Energy's gross revenues. After Fredericks failed to complete a 2014 purchase of McCormick's interest, Native Energy was involuntarily dissolved; the parties then litigated alleged improper distributions, asset transfers, payments, and management fees.

PROCEDURAL HISTORY

McCormick and Northern Improvement sued Fredericks over distributions, alleged conversion of Native Energy assets, payments to his wife, and other business conduct. The district court granted partial summary judgment on several claims, a mistrial occurred during the first trial, and a second trial resulted in findings of fiduciary-duty breaches and fraud, with compensatory and exemplary damages. The North Dakota Supreme Court affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the portion of the judgment ordering Fredericks to pay McCormick \$49,795.76 for distributions and determine the amount of distributions due to McCormick from Native Energy. Conduct further proceedings concerning McCormick's motion for judicial supervision of Native Energy's winding up, including whether good cause exists. Affirm the remainder of the judgment.

CASES CITED

- Schweitzer v. Miller, 2020 ND 79, ¶ 6, 941 N.W.2d 571
- Arrow Midstream Holdings, LLC v. 3 Bears Construction, LLC, 2015 ND 302, ¶¶ 10, 12, 16, 873 N.W.2d 16
- Montana v. United States, 450 U.S. 544, 565 (1981)
- Tidd v. Kroshus, 2015 ND 248, ¶ 7, 870 N.W.2d 181
- Hildenbrand v. Capital RV Center, Inc., 2011 ND 37, ¶ 21, 794 N.W.2d 733
- State v. Wanner, 2010 ND 121, ¶ 13, 784 N.W.2d 143
- Hoffman v. Jevne, 2019 ND 156, ¶ 8, 930 N.W.2d 95
- Krebsbach v. Trinity Hospitals, Inc., 2020 ND 24, ¶ 7, 938 N.W.2d 133
- May v. Sprynczynatyk, 2005 ND 76, ¶ 26, 695 N.W.2d 196
- Sargent County Bank v. Wentworth, 500 N.W.2d 862, 871 (N.D. 1993)
- Erickson v. Erickson, 2010 ND 86, ¶ 9, 782 N.W.2d 346
- Erickson v. Brown, 2008 ND 57, ¶ 27, 747 N.W.2d 34
- In re Estate of Nelson, 2015 ND 122, ¶ 8, 863 N.W.2d 521