

SUPREME COURT OF NEBRASKA

Zwygart v. State Board of Public Accountancy, 270 Neb. 41

699 N.W.2d 362 (2005) · No. No. S-04-598 · Decided June 24, 2005

SUMMARY

The Nebraska Supreme Court reviewed the revocation of Rodney G. Zwygart’s certified public accountant license by the Nebraska State Board of Public Accountancy. The court held that the district court used the wrong standard of review under the Administrative Procedure Act and remanded for de novo review of the administrative record.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	June 24, 2005
DOCKET	No. S-04-598
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Zwygart appealed the Lancaster County District Court's judgment affirming the Nebraska State Board of Public Accountancy's revocation of his certified public accountant license and assessment of proceeding costs. The Nebraska Supreme Court moved the appeal to its docket and reviewed the district court's judicial-review judgment for errors appearing on the record.
STANDARD OF REVIEW	An appellate court reviews a district court's judgment in an Administrative Procedure Act judicial-review proceeding for errors appearing on the record, asking whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Questions of law are reviewed independently. The district court's review of the agency decision, however, must be de novo on the record under Neb. Rev. Stat. § 84-917(5)(a).
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

PARTIES

Rodney G. Zwygart v. State Board of Public Accountancy of the State of Nebraska

TOPICS

judicial review of agency action

administrative procedure act

standard of review

appellate procedure

preservation of error

PRACTICE AREAS

Administrative law

Appellate procedure

Professional licensing

QUESTIONS PRESENTED

1. Whether the Lancaster County District Court applied the proper standard of review when reviewing the Board's revocation of Zwygart's certified public accountant license.
2. Whether the district court's use of a limited substantial-rights standard instead of de novo review on the record constituted plain error requiring remand.

HOLDINGS

1. For a judicial-review proceeding commenced after July 1, 1989, the district court must conduct a de novo review on the record under Neb. Rev. Stat. § 84-917(5)(a), rather than apply the former limited standard based on whether substantial rights were prejudiced.
2. The district court's erroneous limitation of its review constituted plain error and required reversal and remand for a de novo review of the administrative record.

KEY QUOTATIONS

“The district court erroneously limited its review, even though it was required to conduct a de novo review of the record pursuant to § 84-917(5)(a). This constitutes plain error and requires that the cause be remanded to the district court for a de novo review of the record.” (699 N.W.2d at 367)

FACTUAL BACKGROUND

Zwygart was a Nebraska certified public accountant who was involved in closely held corporations operating liquor stores and performed accounting and related professional services for the corporations and shareholders. In prior litigation, a district court found that he had committed fraud and breached fiduciary duties. The Nebraska State Board of Public Accountancy subsequently found that his conduct violated statutory and professional-accountancy standards, revoked his license and permit, and assessed proceeding costs, including prosecutor and hearing-officer fees.

PROCEDURAL HISTORY

The Board revoked Zwygart's certificate and permit to practice and assessed the costs of the administrative proceedings. The Lancaster County District Court affirmed, using language reflecting the limited substantial-

rights standard applicable under an earlier version of the Administrative Procedure Act. The Supreme Court held that the district court was required to conduct a de novo review on the record under Neb. Rev. Stat. § 84-917(5)(a), found plain error, and remanded for that review.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the Lancaster County District Court for a de novo review of the record under Neb. Rev. Stat. § 84-917(5)(a).

CASES CITED

- Fauss v. Norfolk Avenue Liquor Mart, 264 Neb. xxi (Nos. S-01-696, S-01-697, Sept. 18, 2002)
- Nebraska Liquor Distributors v. Nebraska Liquor Control Commission, 269 Neb. 401, 693 N.W.2d 539 (2005)
- In re Grand Jury of Lancaster County, 269 Neb. 436, 693 N.W.2d 285 (2005)
- McClure v. Forsman, 266 Neb. 90, 662 N.W.2d 566 (2003)
- In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004)
- Law Offices of Ronald J. Palagi v. Dolan, 251 Neb. 457, 558 N.W.2d 303 (1997)