

NORTH DAKOTA SUPREME COURT

Wald v. Hovey

2022 ND 15 (2022) · No. No. 20210280 · Decided January 6, 2022

SUMMARY

The North Dakota Supreme Court denied Donna Mae Wald’s petition for a supervisory writ seeking to require the district court to grant her demand for a change of judge. The Court held that the assigned judge’s prior rulings in the parties’ divorce-related proceedings concerned matters pertaining to the subsequent tort and unjust-enrichment action, precluding the statutory demand for a change of judge under N.D.C.C. § 29-15-21.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Gerald W. VandeWalle, Justice; Jon J. Jensen, Chief Justice; Daniel J. Crothers, Justice; Lisa Fair McEvers, Justice; Jerod E. Tufte, Justice
JURISDICTION	North Dakota
DECIDED	January 6, 2022
DOCKET	No. 20210280
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Donna Wald petitioned the North Dakota Supreme Court for a supervisory writ directing the district court to vacate its order denying her demand for a change of judge and to grant the demand.
STANDARD OF REVIEW	Issuance of a supervisory writ is discretionary and is used only to rectify errors and prevent injustice when no adequate alternative remedy exists. The Court considered the merits because an order denying a demand for a change of judge is not immediately appealable and no adequate alternative remedy existed.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Donna Mae Wald v. The Honorable James D. Hovey, Judge of the Court, Southeast Judicial District, Gerard Wald

TOPICS

- appellate procedure
- civil procedure
- family law procedure
- statutory interpretation
- remedies

PRACTICE AREAS

civil procedure

appellate procedure

family law

judicial disqualification

QUESTIONS PRESENTED

1. Whether the North Dakota Supreme Court should exercise supervisory jurisdiction to review the denial of a demand for a change of judge.
2. Whether N.D.C.C. § 29-15-21 precludes a demand for a change of judge when the assigned judge previously ruled, in a separate but related proceeding, on matters directly pertaining to the current action and the demanding party was heard or had an opportunity to be heard.

HOLDINGS

1. The Supreme Court properly considered the merits of Wald's petition for a supervisory writ because denial of a demand for a change of judge is not immediately appealable and no adequate alternative remedy existed.
2. A demand for a change of judge under N.D.C.C. § 29-15-21 is precluded when the judge has ruled upon any matter, including in a separate action or proceeding, that pertains directly to the current action and the demanding party was heard or had an opportunity to be heard.

KEY QUOTATIONS

“The plain language of the statute does not preclude a change only if the judge ruled on a matter within the current action. Rather, it precludes a change in judge if the judge has ruled on any matter, including a matter in a separate action, which pertains to the current action if the demanding party was heard or had an opportunity to be heard.” (¶ 11)

“In these cases we interpreted N.D.C.C. § 29-15-21 broadly. We applied the statute and held the moving party was not entitled to a change of judge, even if there was a new action with a new case number, when the assigned judge ruled on a matter in a prior proceeding that pertained or related directly to the current action or proceeding.” (¶ 16)

FACTUAL BACKGROUND

Donna and Gerard Wald divorced in 2019, and Donna was awarded hay bales and other property. After the divorce judgment, Donna sought contempt or redistribution of property, alleging Gerard had refused to allow her to retrieve the hay bales; that motion was denied and the denial was affirmed on appeal. Donna later brought a separate action alleging unjust enrichment and tortious conversion, seeking approximately \$242,000 for the value of the same hay bales. Judge Daniel D. Narum, who had presided over the divorce proceedings, was assigned to the new action.

PROCEDURAL HISTORY

After the parties' divorce, Wald filed a post-judgment motion concerning hay bales awarded to her in the property distribution. The district court denied that motion, and the North Dakota Supreme Court affirmed. Wald then filed a separate action against Gerard Wald for unjust enrichment and tortious conversion based on the same

hay bales. After Judge Daniel D. Narum was assigned to the new action, Wald demanded a change of judge under N.D.C.C. § 29-15-21. Presiding Judge James D. Hovey denied the demand, and the Supreme Court denied Wald's petition for a supervisory writ.

DISPOSITION

writ_denied

CASES CITED

- Wald v. Wald, 2020 ND 174, ¶ 1, 947 N.W.2d 359
- Smith v. Isakson, 2021 ND 131, ¶ 7, 962 N.W.2d 594
- Holbach v. City of Minot, 2012 ND 117, ¶ 12, 817 N.W.2d 340
- Traynor v. Leclerc, 1997 ND 47, ¶¶ 6, 14, 561 N.W.2d 644
- Giese v. Giese, 2002 ND 194, ¶ 5, 653 N.W.2d 663
- Falcon v. State, 1997 ND 200, ¶¶ 15, 18-19, 570 N.W.2d 719
- Farm Credit Bank v. Brakke, 512 N.W.2d 718, 720 (N.D. 1994)
- State v. Zuger, 459 N.W.2d 235, 237 (N.D. 1990)
- Chisholm v. State, 2019 ND 70, ¶¶ 10, 13, 924 N.W.2d 127
- Schmidt v. Thompson, 347 N.W.2d 315, 321 (N.D. 1984)
- In re M.S., 2017 ND 208, ¶¶ 2, 6, 8-9, 900 N.W.2d 805