

SUPREME COURT OF NEBRASKA

Cinatl v. Prososki

307 Neb. 477 (2020) · No. S-19-972 · Decided October 16, 2020

SUMMARY

The Nebraska Supreme Court affirmed the district court’s confirmation of an arbitration award rejecting Robert H. Cinatl’s claim seeking rescission of a contract to purchase an orthodontics practice and related lease. The court held that an order denying an application to vacate an arbitration award and a related order denying reconsideration were interlocutory, but that those rulings could be reviewed on appeal from the order confirming the award. It further concluded that the arbitrator did not exceed his authority and that rescission was unavailable because the parties could not be restored substantially to the status quo.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	October 16, 2020
DOCKET	S-19-972
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cinatl appealed from the Buffalo County District Court's orders denying his application to vacate an arbitration award, overruling his motion for a new trial or reconsideration, and confirming the award.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is reviewed as a matter of law. Review of a decision to vacate, modify, or confirm an arbitration award is independent as to questions of law, while the trial court's factual findings are reviewed for clear error. Evidentiary error in a civil case is reversible only when it unfairly prejudices a substantial right.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Robert H. Cinatl v. Karen R. Prososki, Personal Representative of the Estate of Robert R. Prososki, deceased, Karen R. Prososki,

individually and as beneficiary of the Estate of Robert R. Prososki,
deceased

TOPICS

arbitration final judgment rule appellate procedure rescission contract interpretation

PRACTICE AREAS

Appellate procedure Arbitration Contracts Equitable remedies Civil procedure

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had jurisdiction to review the district court's order denying the application to vacate the arbitration award and the order overruling the motion for a new trial or reconsideration before the award was confirmed.
2. Whether the arbitrator exceeded the arbitrator's authority by relying on unpled defenses or failing to make a finding on fraud.
3. Whether the district court was required to confirm the arbitration award after denying the application to vacate and with no pending application to modify or correct the award.
4. Whether the district court violated procedural due process by failing to review the arbitration record before confirming the award.
5. Whether the district court committed reversible error by failing to rule on the admissibility of Cinatl's affidavit and attached documents.

HOLDINGS

1. An order denying an application to vacate an arbitration award and an order overruling a motion for a new trial or reconsideration are interlocutory, rather than final appealable orders, when the award has not yet been confirmed; those orders may be reviewed on appeal from the later order confirming the award.
2. The arbitrator did not exceed the arbitrator's authority by determining that rescission was unavailable because the parties could not be restored substantially to the status quo, even though the arbitrator discussed delay, estoppel, and waiver and did not decide whether fraud occurred.
3. When an application to vacate has been denied and no application to modify or correct the award is pending, the district court must confirm the arbitration award and has no discretion to refuse confirmation.
4. The district court did not violate due process by failing to review the arbitration record before confirming the award, and its failure to rule on the admissibility of Cinatl's affidavit was not reversible error because Cinatl suffered no prejudice to a substantial right.

KEY QUOTATIONS

“The rights at issue in an interlocutory determination denying judicial vacatur of an arbitration award can be adequately vindicated through an appeal of the order confirming the award.” (489)

“The purpose of rescission is to place the parties in a status quo, that is, return the parties to their position which existed before the rescinded contract; hence, rescission may be unavailable unless the parties can be placed substantially in the status quo.” (492)

“The UAA does not allow for the exercise of discretion by the court when a request for confirmation is made and there is no pending application for vacation, modification, or correction.” (492-493)

FACTUAL BACKGROUND

Cinatl purchased an orthodontics practice and leased the office building after relying on representations in an investor prospectus. He soon discovered substantial discrepancies concerning active patients, total files, new patients, and receivables, and notified the sellers that he wanted the transaction set aside. Nevertheless, he continued operating the practice for nearly two years, during which time the original owner died and the practice's patients and operations changed. The arbitrator found for Prososki and concluded that rescission was unavailable because the parties could no longer be returned substantially to the status quo.

PROCEDURAL HISTORY

Cinatl sued Prososki seeking rescission of a contract to purchase an orthodontics practice and a related lease based on alleged fraudulent misrepresentations. The district court compelled arbitration. The arbitrator ruled for Prososki, concluding that rescission was unavailable because Cinatl had continued operating the practice and the parties could not be restored to the status quo. The district court denied Cinatl's application to vacate, overruled his motion for a new trial, and then confirmed the award. The Nebraska Supreme Court accepted the appeal, held that the earlier orders were interlocutory but reviewable through the appeal from confirmation, and affirmed.

DISPOSITION

affirmed

CASES CITED

- TNT Cattle Co. v. Fife, 304 Neb. 890, 937 N.W.2d 811 (2020)
- Picard v. P & C Group 1, 306 Neb. 292, 945 N.W.2d 183 (2020)
- Garlock v. 3DS Properties, 303 Neb. 521, 930 N.W.2d 503 (2019)
- Cullinane v. Beverly Enters.—Neb., 300 Neb. 210, 912 N.W.2d 774 (2018)
- State v. Fredrickson, 306 Neb. 81, 943 N.W.2d 701 (2020)
- Pearce v. Mutual of Omaha Ins. Co., 293 Neb. 277, 876 N.W.2d 899 (2016)
- Kremer v. Rural Community Ins. Co., 280 Neb. 591, 788 N.W.2d 538 (2010)
- Hartman v. City of Grand Island, 265 Neb. 433, 657 N.W.2d 641 (2003)
- Mid-Wilshire Associates v. O’Leary, 7 Cal. App. 4th 1450, 9 Cal. Rptr. 2d 862 (1992)
- Salud v. Financial Sec. Ins. Co., Ltd., 69 Haw. 427, 745 P.2d 290 (1987)
- Nelson Paving Co., Inc. v. Hjelle, 207 N.W.2d 225 (N.D. 1973)
- Ayers v. R.A. Murphy Co., 163 Ohio App. 3d 497, 839 N.E.2d 80 (2005)

- Drummond v. State Farm Mut. Auto. Ins. Co., 280 Neb. 258, 785 N.W.2d 829 (2010)
- Stewart Title Guar. Co. v. Tilden, 64 P.3d 739 (Wyo. 2003)
- Seldin v. Estate of Silverman, 305 Neb. 185, 939 N.W.2d 768 (2020)
- Kracl v. Loseke, 236 Neb. 290, 461 N.W.2d 67 (1990)
- Glasson v. Board of Equal. of City of Omaha, 302 Neb. 869, 925 N.W.2d 672 (2019)
- In re Interest of Vladimir G., 306 Neb. 127, 944 N.W.2d 309 (2020)
- AVG Partners I v. Genesis Health Clubs, ante p. 47, 948 N.W.2d 212 (2020)

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