

SUPREME COURT OF SOUTH DAKOTA

Jundt v. Fuller

2007 SD 62 · No. No. 24393 · Decided June 27, 2007

SUMMARY

The Supreme Court of South Dakota held that a circuit court exceeded its jurisdiction by remanding a final, unappealed water-permit decision to the South Dakota Water Management Board for reconsideration. The court concluded that the circuit court should have treated the administrative decision as final and proceeded with the petitioners’ eminent-domain action to enforce the permit. It granted a peremptory writ of prohibition directing the circuit judge to vacate the remand order and continue the circuit-court proceedings.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Sabers, Justice; Konenkamp, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	June 27, 2007
DOCKET	No. 24393
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for writs of mandamus, prohibition, and certiorari challenging a circuit judge's order remanding the petitioners' water-permit matter to the South Dakota Water Management Board. The Supreme Court issued an alternative writ of prohibition and, after briefing, granted a peremptory writ of prohibition.
STANDARD OF REVIEW	Whether the circuit judge exceeded jurisdiction and authority by remanding a final, unappealed administrative decision to the agency for reconsideration; review in the writ proceeding was directed to jurisdiction, authority, and clear abuse of discretion.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential
PARTIES	Donald Jundt, Virgena Jundt v. The Honorable A. P. Fuller, Circuit Judge of the Seventh Judicial Circuit

TOPICS

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QUESTIONS PRESENTED

1. Whether the circuit judge had jurisdiction or authority to remand a final, unappealed water-permit decision to the South Dakota Water Management Board for reconsideration.
2. Whether the doctrine of primary jurisdiction authorized the circuit judge's remand order.
3. Whether a peremptory writ of prohibition was the appropriate remedy for the circuit judge's actions.

HOLDINGS

1. The circuit judge exceeded his jurisdiction and authority by attempting to remand the petitioners' eminent-domain case and water-permit application to the Board for reconsideration after the permit decision had become final and was no longer subject to administrative reconsideration.
2. The doctrine of primary jurisdiction did not authorize the circuit judge to transfer the final water-permit application back to the Board for reconsideration.
3. A peremptory writ of prohibition was the appropriate remedy, and the respondent was directed to vacate the remand order and proceed with the petitioners' circuit-court action.

KEY QUOTATIONS

“An unappealed administrative decision becomes final and should be accorded res judicata effect.” (§12)

“Based upon the foregoing analysis, we hold that the respondent exceeded his jurisdiction and authority by attempting to remand the petitioners' eminent domain case to the Board for reconsideration of the petitioners' water permit application.” (§13)

“For the foregoing reasons, we grant the petitioners a peremptory writ of prohibition directing the respondent to vacate his order of remand and to proceed with consideration of the petitioners' action in circuit court.” (§15)

FACTUAL BACKGROUND

The South Dakota Water Management Board granted Donald and Virgena Jundt a permit to divert water from the South Side Ditch diversion point along Rapid Creek. South Side Ditch and Water Company refused to allow the Jundts to use the ditch, so the Jundts commenced an eminent-domain action in circuit court to obtain use of the ditch. The circuit judge later ordered the permit application remanded to the Board for additional findings concerning whether the Jundts qualified as persons under SDCL 46-5-34.1 and for consideration of additional materials, even though the permit decision had not been appealed and had become final.

PROCEDURAL HISTORY

The South Dakota Water Management Board granted the petitioners a water permit on March 15, 2005, and no appeal was taken. After South Side Ditch and Water Company refused to allow use of the ditch, the petitioners commenced an eminent-domain action in circuit court. The circuit judge ordered the water-permit application remanded to the Board for additional findings and reconsideration. The Supreme Court prohibited enforcement of that remand order and directed the circuit court to proceed with the eminent-domain action.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The respondent must vacate the December 4, 2006 order of remand and proceed with consideration of the petitioners' eminent-domain action in circuit court.

CASES CITED

- Dan Nelson, Automotive, Inc. v. Viken, 2005 SD 109, ¶ 7, 706 N.W.2d 239, 242
- Mordhorst v. Egert, 88 S.D. 527, 531-32, 223 N.W.2d 501, 504 (1974)
- Northwestern Bell Tel. Co. v. Chicago & North Western Transp. Co., 245 N.W.2d 639, 642 (S.D. 1976)
- Northwestern Bell Tel. Co. v. Hawkeye State Tel. Co., 165 N.W.2d 771 (Iowa 1969)
- Romey v. Landers, 392 N.W.2d 415 (S.D. 1986)
- Birmingham Hockey Club, Inc. v. National Council on Compensation Insurance, Inc., 827 So. 2d 73, 84 (Ala. 2002)
- Jones Truck Lines, Inc. v. Price Rubber Corp., 182 B.R. 901, 911 (M.D. Ala. 1995)
- Stearns-Hotzfield v. Farmers Insurance Exchange, 360 N.W.2d 384, 389 (Minn. Ct. App. 1985)
- Anchor Casualty Co. v. Bongards Cooperative Creamery Association, 91 N.W.2d 122, 126 (Minn. 1958)
- State ex rel. Turnbladh v. District Court, County of Ramsey, 107 N.W.2d 307, 313 (Minn. 1960)
- State ex rel. Harpley Builders, Inc. v. Akron, 584 N.E.2d 724, 725 (Ohio 1992)
- Wiles v. Department of Labor & Industries of State, 209 P.2d 462, 465 (Wash. 1949)
- City of Philadelphia Police Department v. Civil Service Commission of the City of Philadelphia, 702 A.2d 878, 880 (Pa. Commw. Ct. 1997)
- Stepan v. J.C. Campbell Co., 36 N.W.2d 401, 404 (Minn. 1949)
- Perkins v. Department of Medical Assistance, 555 S.E.2d 500, 502 (Ga. Ct. App. 2001)
- Joelson v. City of Casper, Wyo., 676 P.2d 570, 572 (Wyo. 1984)
- Pinkerton v. Jeld-Wen, Inc., 588 N.W.2d 679, 680 (Iowa 1999)
- Anderson v. Nash Finch Wholesale Fruit & Grocery Co., 88 S.D. 59, 215 N.W.2d 125 (1974)
- In re State of S.D., 692 F.2d 1158, 1160 n. 3 (8th Cir. 1982)
- In re State, 180 S.W.3d 423, 425 (Tex. App. 2005)
- Swezy v. Bart-Swezy, 866 So. 2d 1248 (Fla. Dist. Ct. App. 2004)
- Gray v. Gienapp, 2007 SD 12, 727 N.W.2d 808

