

SUPREME COURT OF NORTH DAKOTA

Friends of Duane Sand-2012 v. Job Service North Dakota

2016 ND 38 · No. 20150238 · Decided February 18, 2016

SUMMARY

The North Dakota Supreme Court dismissed an appeal from an order denying post-judgment relief in a district court review of a Job Service North Dakota decision. The court held that North Dakota Rules of Civil Procedure 59 and 60 do not apply to post-judgment motions in administrative appeals and that the appellant had not timely appealed the district court judgment affirming the agency decision.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers; Lisa Fair McEvers; Carol Ronning Kapsner; Dale V. Sandstrom; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	February 18, 2016
DOCKET	20150238
DISPOSITION	dismissed
PROCEDURAL POSTURE	Friends of Duane Sand-2012 appealed from a district court order denying its motion for reconsideration under N.D.R.Civ.P. 59 or relief from judgment under N.D.R.Civ.P. 60 after the district court affirmed a Job Service North Dakota decision.
STANDARD OF REVIEW	The Supreme Court reviewed whether the district court properly denied post-judgment relief and whether the appeal was authorized by statute. In an administrative appeal, the district court exercises appellate jurisdiction and is limited to the agency record and the statutory grounds for affirmance, modification, reversal, or remand.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Friends of Duane Sand-2012 v. Job Service North Dakota

TOPICS

judicial review of agency action

appellate procedure

motion for reconsideration

administrative law

appellate jurisdiction

PRACTICE AREAS

administrative law

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether N.D.R.Civ.P. 59 or 60 permits a district court to entertain a post-judgment motion in a statutory administrative appeal.
2. Whether the Supreme Court had statutory appellate jurisdiction when Friends of Duane Sand appealed from the order denying its post-judgment motion rather than timely appealing from the district court judgment affirming the agency decision.

HOLDINGS

1. N.D.R.Civ.P. 59 and 60 do not apply to a district court's appellate review of an administrative agency decision when their use would be inconsistent with the Administrative Agencies Practice Act.
2. The appeal had to be dismissed because N.D.C.C. § 28-32-49 authorizes an appeal from the district court judgment entered after administrative review, and Friends of Duane Sand did not timely appeal from that judgment.

KEY QUOTATIONS

"We conclude Rule 60(b) is inapplicable to an administrative appeal to district court." (¶ 5)

"An appeal is not a matter of right but a creature of statute, and, therefore, no right to appeal exists unless authorized by statute." (¶ 7)

FACTUAL BACKGROUND

Friends of Duane Sand-2012 was a political campaign committee formed for Duane Sand's 2012 United States Senate campaign and ceased operating after Sand lost the primary election. Job Service investigated whether the committee was liable for unemployment insurance charges arising from a campaign worker's claim for benefits. The administrative law judge found that Friends of Duane Sand was an employing unit, that Joe Meyer was an independent contractor, and that Sarah Mohler was an employee; Job Service declined review.

PROCEDURAL HISTORY

Job Service North Dakota determined that Friends of Duane Sand was an employing unit and that Sarah Mohler was an employee, while determining that Joe Meyer was an independent contractor. The district court affirmed the agency decision. After receiving notice of entry of judgment, Friends of Duane Sand filed a motion for reconsideration or relief from judgment, which the district court denied. It then appealed only from the post-judgment order, not from the underlying judgment, and the North Dakota Supreme Court dismissed the appeal as unauthorized and untimely.

DISPOSITION

dismissed

CASES CITED

- Lewis v. North Dakota Workers Comp. Bureau, 2000 ND 77, 609 N.W.2d 445
- Davis v. State Job Service, 365 N.W.2d 497 (N.D. 1985)
- Lende v. North Dakota Workers Compensation Bureau, 1997 ND 178, 568 N.W.2d 755
- Reliance Ins. Co. v. Public Service Commission, 250 N.W.2d 918 (N.D. 1977)
- Gregory v. North Dakota Workers Compensation Bureau, 1998 ND 94, 578 N.W.2d 101
- Flink v. North Dakota Workers Compensation Bureau, 1998 ND 11, 574 N.W.2d 784
- Otto v. North Dakota Workers Compensation Bureau, 533 N.W.2d 703 (N.D. 1995)
- Center State Bank, Inc. v. State Banking Bd., 276 N.W.2d 132 (N.D. 1979)
- In re Estate of Jensen, 162 N.W.2d 861 (N.D. 1968)
- Edwards v. Velvac, Inc., 19 F.R.D. 504 (E.D. Wis. 1956)
- United Accounts, Inc. v. Lantz, 145 N.W.2d 488 (N.D. 1966)
- Hamilton v. Hamilton, 410 N.W.2d 508 (N.D. 1987)
- Buzzell v. Libi, 340 N.W.2d 36 (N.D. 1983)
- Department of Corrections v. Colbert, 413 S.E.2d 498 (Ga. App. 1991)
- Buchler v. Ohio Dept. of Commerce, 673 N.E.2d 611 (Ohio App. 1996)
- Garfield Hts. School Dist. v. Bd. of Education, 619 N.E.2d 429 (Ohio App. 1992)
- Giovanetti v. Ohio State Dental Board, 584 N.E.2d 66 (Ohio App. 1990)
- Schaal v. Commissioner of Social Sec., 969 F. Supp. 822 (N.D.N.Y. 1996), vacated on other grounds, 134 F.3d 496 (2d Cir. 1998)
- Vernon v. North Dakota Workers Compensation Bureau, 1999 ND 153, 598 N.W.2d 139
- United Pac. Ins. Co. v. Aetna Ins. Co., 311 N.W.2d 170 (N.D. 1981)
- State by Workers Compensation Bureau v. Kostka Food Service, Inc., 516 N.W.2d 278 (N.D. 1994)