

NEBRASKA SUPREME COURT

Carlson v. Allianz Versicherungs-Aktiengesellschaft

287 Neb. 628 (2014) · No. No. S-13-492 · Decided March 7, 2014

SUMMARY

The Nebraska Supreme Court affirmed dismissal of the Carlsons’ complaint seeking to vacate a prior summary judgment in favor of Allianz Versicherungs-Aktiengesellschaft. The court held that the district court’s inherent authority to vacate the judgment had expired, that the complaint was not properly served under the Hague Convention for purposes of relief under Nebraska law, and that equitable relief was unavailable because the Carlsons had an adequate remedy at law. The court also addressed necessary parties in declaratory judgment actions and the jurisdictional effect of failing to join Chrysler.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	March 7, 2014
DOCKET	No. S-13-492
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Carlsons appealed from the Lancaster County District Court's dismissal of their complaint seeking to vacate a prior summary judgment entered in favor of Allianz. The Nebraska Supreme Court moved the case to its docket and reviewed the dismissal de novo.
STANDARD OF REVIEW	Although a motion to vacate ordinarily is reviewed for abuse of discretion, an appeal from an order sustaining a motion to dismiss is reviewed de novo. Because the matter was disposed of on Allianz's motion to dismiss, the Supreme Court applied de novo review.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Carolyn Carlson, Richard Carlson v. Allianz Versicherungs-Aktiengesellschaft, Does 1 through 50, inclusive

TOPICS

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QUESTIONS PRESENTED

1. Whether the district court properly dismissed the Carlsons' complaint to vacate the March 2011 judgment because the time for exercising the court's inherent power to vacate had expired.
2. Whether the complaint to vacate was procedurally defective for failure to serve Allianz in compliance with the Hague Convention and Nebraska law.
3. Whether Allianz waived its insufficient-service defense by asserting it together with a failure-to-state-a-claim defense.
4. Whether the district court should have exercised equitable power to vacate the prior judgment despite the availability of an adequate remedy at law.
5. Whether the district court issued an improper advisory opinion concerning drop-down coverage.

HOLDINGS

1. The district court lacked authority to vacate the judgment under its inherent power because the Carlsons filed their complaint after the 2011 court term and more than six months after entry of the judgment, the statutory extension provided by § 25-2001(1).
2. The district court lacked jurisdiction to vacate the judgment under § 25-2001(4) because the Carlsons did not serve Allianz in accordance with the Hague Convention and Nebraska law.
3. Allianz did not waive its insufficient-service defense by asserting it in the same motion as its failure-to-state-a-claim defense.
4. The Carlsons were not entitled to equitable relief because they had an adequate remedy at law.
5. The Supreme Court declined to consider the advisory-opinion argument because it was unnecessary to adjudicate the case and had not been presented to or decided by the district court.

KEY QUOTATIONS

“The presence of necessary parties in declaratory judgment actions is jurisdictional and cannot be waived, and if such persons are not made parties, then the district court has no jurisdiction to determine the controversy.” (at 638)

“Because the Carlsons had an adequate remedy at law, they were not entitled to equitable relief from the judgment.” (at 642)

FACTUAL BACKGROUND

The Carlsons brought a declaratory judgment action against Allianz, a German insurer for Chrysler, alleging that Allianz had to provide first-dollar or drop-down coverage after Chrysler became insolvent in bankruptcy. The

district court entered summary judgment for Allianz, concluding in part that Chrysler was a necessary party and dismissing the action without prejudice. More than a year later, after a bankruptcy-court order permitted Chrysler to be named as a nominal defendant, the Carlsons sought to vacate the prior judgment, but served the complaint on Allianz's Nebraska attorney by certified mail rather than through the Hague Convention.

PROCEDURAL HISTORY

The Carlsons filed a declaratory judgment action against Allianz concerning excess insurance coverage for Chrysler. The district court entered summary judgment for Allianz in March 2011, determining that Chrysler was a necessary party, and the Carlsons did not timely appeal or seek timely postjudgment relief. After obtaining bankruptcy-court permission to name Chrysler as a nominal defendant, the Carlsons filed a November 2012 complaint to vacate the judgment. The district court dismissed that complaint, and the Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Johnson v. Johnson, 282 Neb. 42, 803 N.W.2d 420 (2011)
- Estate of Teague v. Crossroads Co-op Assn., 286 Neb. 1, 834 N.W.2d 236 (2013)
- DMK Biodiesel v. McCoy, 285 Neb. 974, 830 N.W.2d 490 (2013)
- Wulf v. Kunnath, 285 Neb. 472, 827 N.W.2d 248 (2013)
- Dunn v. Daub, 259 Neb. 559, 611 N.W.2d 97 (2000)
- Ryan v. Ryan, 257 Neb. 682, 600 N.W.2d 739 (1999)
- Taylor Oil Co. v. Retikis, 254 Neb. 275, 575 N.W.2d 870 (1998)
- Fitzgerald v. Fitzgerald, 286 Neb. 96, 835 N.W.2d 44 (2013)
- Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988)
- Doe v. Board of Regents, 280 Neb. 492, 788 N.W.2d 264 (2010)
- Jeffrey B. v. Amy L., 283 Neb. 940, 814 N.W.2d 737 (2012)
- Lang v. Howard County, 286 Neb. 66, 840 N.W.2d 876 (2013)
- First Express Servs. Group v. Easter, 286 Neb. 912, 840 N.W.2d 465 (2013)