SUPREME COURT OF NEBRASKA

Breci v. St. Paul Mercury Insurance Company

Breci v. St. Paul Mercury Ins. Co., 288 Neb. 626 (2014) · No. S-12-983 · Decided July 25, 2014

SUMMARY

The Nebraska Supreme Court affirmed summary judgment for St. Paul Mercury Insurance Company in a coverage dispute involving former credit-union directors. The court held that the district court properly vacated an initial declaratory judgment, permitted the insurer to amend its answer to assert additional defenses after a settlement, and addressed the appeal from the final judgment. The decision discusses jurisdiction, summary judgment, declaratory judgments, pleading amendments, equitable estoppel, discovery, continuances, and insurance-policy exclusions.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Wright, J.; Connolly, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	July 25, 2014
DOCKET	S-12-983
DISPOSITION	affirmed
PROCEDURAL POSTURE	Former directors brought a declaratory judgment action seeking insurance coverage for claims asserted against them by their credit union. The district court initially granted the former directors' motion for declaratory judgment and denied the insurer's summary-judgment motion, later vacated the declaratory judgment, permitted the insurer to amend its answer, and ultimately granted the insurer's second motion for summary judgment. The former directors and the intervening credit union appealed; the insurer cross-appealed.
STANDARD OF REVIEW	Orders granting or denying motions to alter or amend judgment, allowing amendment of pleadings, ruling on discovery, and ruling on a motion for continuance are reviewed for abuse of discretion. When facts are undisputed, interpretation of an insurance policy and application of a coverage exclusion present questions of law.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

PARTIES	Fred Breci et al., Union Pacific Streamliner Federal Credit Union, intervenor-appellant v. St. Paul Mercury Insurance Company

TOPICS

insurance coverage · declaratory relief insurance · summary judgment · motion to amend · appellate jurisdiction

PRACTICE AREAS

insurance · civil procedure · appellate procedure · contracts · remedies

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by vacating its prior order granting the former directors a declaratory judgment.
2. Whether the district court abused its discretion by allowing St. Paul to amend its answer and assert additional coverage defenses after the initial declaratory ruling and settlement.
3. Whether the district court abused its discretion by denying additional discovery and postponing the summary-judgment hearing.
4. Whether the Nebraska Supreme Court could review the challenged interlocutory orders and St. Paul's cross-appeal from denial of its first summary-judgment motion.
5. Whether the insurer-versus-insured exclusion barred coverage.

HOLDINGS

1. The Supreme Court had jurisdiction to review the challenged nonfinal orders after entry of the final judgment because reversal of those orders could require reversal, vacation, or modification of the final judgment.
2. A denial of a motion for summary judgment is interlocutory and not independently appealable, but it may be challenged after entry of final judgment.
3. The district court did not abuse its discretion by vacating the prior declaratory judgment because Nebraska does not recognize a standalone motion for declaratory judgment and the former directors had not established entitlement to summary judgment.
4. The district court did not abuse its discretion by permitting St. Paul to amend its answer to assert additional policy defenses after the settlement of the underlying action.
5. Equitable estoppel and the doctrine of mending one's hold did not bar St. Paul from asserting additional policy defenses.
6. The district court did not abuse its discretion by denying the motion to compel discovery or the motion to postpone the summary-judgment hearing.

KEY QUOTATIONS

> *"In Nebraska, a party may not simply move the court for a declaratory judgment."* (638-639)

> *"We expressly reserve all rights under the Policy and pursuant to applicable law to rely upon and enforce additional terms of the Policy and to disclaim coverage on alternative bases if facts become known to us which result in the application of other terms, conditions, exclusions, endorsements or other provisions of the Policy, including representations, statements, declarations and/or omissions in connection with the . . . application."* (642)

FACTUAL BACKGROUND

The National Credit Union Administration placed Union Pacific Streamliner Federal Credit Union under conservatorship after concerns including preferential treatment involving members of the board. The credit union later sued former directors for alleged breaches of fiduciary duty arising from transactions involving companies connected to a director. St. Paul issued a management-liability policy, initially described potential coverage while reserving all rights, and later denied coverage under policy exclusions. The former directors settled the underlying action by paying $155,000, confessing judgment in the amount of $2 million, and assigning their interests in the coverage litigation to the credit union.

PROCEDURAL HISTORY

The district court initially ruled for the former directors on the applicability of an insured-versus-insured exclusion. While the insurer's motion to alter or amend was pending, the parties settled the underlying credit-union litigation, and the court allowed the insurer to amend its answer to assert additional policy defenses. The court then vacated the earlier declaratory judgment, denied further discovery and postponement, granted the insurer's second motion for summary judgment, and dismissed the claims. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Carlson v. Allianz Versicherungs-AG, 287 Neb. 628, 844 N.W.2d 264 (2014)
- Deleon v. Reinke Mfg. Co., 287 Neb. 419, 843 N.W.2d 601 (2014)
- Connelly v. City of Omaha, 278 Neb. 311, 769 N.W.2d 394 (2009)
- Brozovsky v. Norquest, 231 Neb. 731, 437 N.W.2d 798 (1989)
- Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007)
- Russell v. Clarke, 15 Neb. Ct. App. 221, 724 N.W.2d 840 (2006)
- Fox v. Whitbeck, 286 Neb. 134, 835 N.W.2d 638 (2013)
- Kubicek v. City of Lincoln, 265 Neb. 521, 658 N.W.2d 291 (2003)
- In re Interest of J.H., 242 Neb. 906, 497 N.W.2d 346 (1993)
- State v. Green, 236 Neb. 33, 458 N.W.2d 472 (1990)

- State v. Tingle, 239 Neb. 558, 477 N.W.2d 544 (1991)
- Countryside Developers v. Peterson, 9 Neb. Ct. App. 798, 620 N.W.2d 124 (2000)
- C.E. v. Prairie Fields Family Medicine, 287 Neb. 667, 844 N.W.2d 56 (2014)
- Durre v. Wilkinson Development, 285 Neb. 880, 830 N.W.2d 72 (2013)
- Mutual of Omaha Bank v. Murante, 285 Neb. 747, 829 N.W.2d 676 (2013)
- Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007)
- Sayah v. Metropolitan Prop. & Cas. Ins. Co., 273 Neb. 744, 733 N.W.2d 192 (2007)
- Design Data Corp. v. Maryland Cas. Co., 243 Neb. 945, 503 N.W.2d 552 (1993)
- First United Bank v. First Am. Title Ins. Co., 242 Neb. 640, 496 N.W.2d 474 (1993)
- Darrah v. Bryan Memorial Hosp., 253 Neb. 710, 571 N.W.2d 783 (1998)
- U.S. Bank Nat. Assn. v. Peterson, 284 Neb. 820, 823 N.W.2d 460 (2012)
- Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003)
- Woodle v. Commonwealth Land Title Ins. Co., 287 Neb. 917, 844 N.W.2d 806 (2014)
- Kerford Limestone Co. v. Nebraska Dept. of Rev., 287 Neb. 653, 844 N.W.2d 276 (2014)