

SUPREME COURT OF NEBRASKA

Florida ex rel. Department of Insurance v. Countrywide Truck Insurance Agency, Inc.

270 Neb. 454 (2005) · Decided September 30, 2005

SUMMARY

The Nebraska Supreme Court considered whether it had jurisdiction over an interlocutory appeal from the denial of a motion to recuse a district court judge. The court held that the order was neither final nor within the collateral-order exception because the recusal issue could be adequately reviewed after a final judgment. The appeal was dismissed for lack of jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.
JURISDICTION	Nebraska
DECIDED	September 30, 2005
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed the Douglas County District Court's denial of their motion to recuse the district judge. They also had petitioned for a writ of mandamus compelling recusal, but the Nebraska Supreme Court denied that petition before addressing the appeal.
STANDARD OF REVIEW	A jurisdictional question not involving a factual dispute is determined as a matter of law, requiring the appellate court to reach an independent conclusion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Countrywide Insurance Agency, Inc., David L. Fulkerson v. State of Florida on the relation of the Department of Insurance of the State of Florida

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court had appellate jurisdiction over an interlocutory order denying a motion to recuse a district judge.
2. Whether the denial of a recusal motion falls within the collateral-order exception to the final-order requirement.

HOLDINGS

1. An order denying a motion to recuse is not a final, appealable order and does not fall within the collateral-order exception when the alleged recusal issue can be fully reviewed on appeal from a final judgment in the underlying case.

KEY QUOTATIONS

“If an appeal from an order of disqualification involves issues collateral to the basic controversy and if an appeal from a judgment dispositive of the entire case would not be likely to protect the client’s interests, interlocutory review is appropriate.” (457)

“Thus, the collateral order exception does not apply to the denial of a motion for recusal” (458)

FACTUAL BACKGROUND

The State of Florida, acting through its Department of Insurance as receiver for insolvent United Southern Assurance Company, sued Countrywide Truck Insurance Agency for allegedly collecting premiums but failing to remit them. The State also alleged that Countrywide Insurance Agency was Truck's alter ego and that David L. Fulkerson controlled both entities. After the district court denied appellants' partial-summary-judgment motion, appellants sought recusal based on alleged failure to distinguish Truck from the nondefaulting defendants and an allegedly inaccurate characterization of their motion.

PROCEDURAL HISTORY

The State of Florida sued Countrywide Truck Insurance Agency, Inc., Countrywide Insurance Agency, and David L. Fulkerson in the Douglas County District Court concerning allegedly unremitted insurance premiums and alter-ego liability. After the district court denied appellants' motion for partial summary judgment, appellants moved for recusal based on alleged judicial bias and an inaccurate description of their summary-judgment request. The district court denied recusal; the Supreme Court denied appellants' mandamus petition and dismissed the present appeal for lack of jurisdiction because the recusal order was neither final nor within the collateral-order exception.

DISPOSITION

dismissed

CASES CITED

- State of Florida v. Countrywide Truck Ins. Agency, 258 Neb. 113, 602 N.W.2d 432 (1999)
- Trainum v. Sutherland Assocs., 263 Neb. 778, 642 N.W.2d 816 (2002)
- Pennfield Oil Co. v. Winstrom, 267 Neb. 288, 673 N.W.2d 558 (2004)
- Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997)
- In re Martinez-Catala, 129 F.3d 213 (1st Cir. 1997)
- Nobby Lobby, Inc. v. City of Dallas, 970 F.2d 82 (5th Cir. 1992)
- Krieg v. Krieg, 743 A.2d 509 (Pa. Super. 1999)
- In re Corrugated Container Antitrust Litigation, 614 F.2d 958 (5th Cir. 1980)
- In re Cargill, Inc., 66 F.3d 1256 (1st Cir. 1995)
- State v. Forte, 150 Vt. 654, 553 A.2d 564 (1988)
- Alexander v. Chicago Park Dist., 709 F.2d 463, 470-71 (7th Cir. 1983)
- State v. Sklenar, 269 Neb. 98, 690 N.W.2d 631 (2005)
- Smith v. Lincoln Meadows Homeowners Assn., 267 Neb. 849, 678 N.W.2d 726 (2004)

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