

SUPREME COURT OF NORTH DAKOTA

Brossart v. Janke

2020 ND 98 (2020) · No. 20190236 · Decided May 7, 2020

SUMMARY

The North Dakota Supreme Court affirmed an order compelling the Brossarts to answer post-judgment interrogatories and awarding attorney’s fees. The court held that notice requirements under the Uniform Enforcement of Foreign Judgments Act were not satisfied by serving the judgment debtors’ federal attorney, but the defect did not prejudice the Brossarts because they had actual notice and an opportunity to respond. The court also held that separate interrogatories could be served on each plaintiff and that the Brossarts’ collateral challenge to the unappealed federal judgment was frivolous.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle; Jon J. Jensen; Daniel J. Crothers; Jerod E. Tufte; Lisa Fair McEvers
JURISDICTION	North Dakota
DECIDED	May 7, 2020
DOCKET	20190236
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from a district court order denying their motion for relief from judgment, granting the defendants' motion to compel answers to post-judgment interrogatories, and awarding attorney's fees.
STANDARD OF REVIEW	Orders compelling discovery and decisions regarding attorney's fees are reviewed for abuse of discretion. Interpretation of N.D.R.Civ.P. 33 is reviewed de novo.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Rodney Brossart, Susan Brossart, Thomas Brossart v. Kelly Janke, individually and in his official capacity as Sheriff for Nelson County, Eric Braathen, individually and in his official capacity as Deputy Sheriff for Nelson County, Nelson County, North Dakota

TOPICS

civil procedure

discovery dispute

statutory interpretation

attorney fees

appellate procedure

PRACTICE AREAS

civil procedure

judgment enforcement

discovery

appellate procedure

attorney fees

QUESTIONS PRESENTED

1. Whether the district court properly compelled the Brossarts to answer interrogatories in aid of execution despite the defendants' failure initially to mail statutory notice of filing of the foreign judgment.
2. Whether N.D.R.Civ.P. 33(a)(3) permitted the defendants to serve up to 50 interrogatories on each of the three plaintiffs separately and whether the interrogatories exceeded the numerical limit.
3. Whether the Brossarts' refusal to answer the interrogatories and their motion for relief from judgment were frivolous, warranting an award of attorney's fees under N.D.C.C. § 28-26-01(2) and N.D.R.Civ.P. 11(b).

HOLDINGS

1. Under N.D.C.C. § 28-20.1-03(2) and (3), a judgment creditor may not execute on or commence other enforcement processes for a foreign judgment until the statutory notice procedures have been adequately satisfied; service of notice on the attorney who represented the judgment debtor in the underlying federal action does not satisfy the statute.
2. Although the defendants did not initially comply with the statutory mailing requirement, the Brossarts were not prejudiced because they learned of the filing, had an opportunity to respond and raise defenses, and the district court did not issue its enforcement order until more than ten days after notice or actual knowledge.
3. N.D.R.Civ.P. 33(a)(3) permits a party to serve up to 50 interrogatories on each opposing party; it does not impose a combined 50-interrogatory limit on all plaintiffs or defendants. Subparts logically or factually subsumed within and necessarily related to a primary question are not counted separately. The defendants therefore could serve separate interrogatories on each Brossart, and each set contained 42 interrogatories for purposes of the rule.
4. The district court did not abuse its discretion by finding the Brossarts' refusal to answer the interrogatories and their collateral attack on the unappealed federal judgment frivolous and awarding the defendants \$2,340 in attorney's fees.

KEY QUOTATIONS

“Interpreting § 28-20.1-03(3) as allowing a judgment creditor to execute on and enforce a foreign judgment before the judgment debtor receives notice or notice was in good faith attempted to be served on the judgment debtor would lead to absurd, ludicrous, and illogical results and unjust consequences.” (3-4)

“Adhering to our decision in Beck, we also agree with the Brossarts’ contention that enforcement proceedings are stayed until the notice procedures provided in § 28-20.1-03(2) are adequately complied with.” (6)

“Because the Brossarts were informed of the proceedings against them and had an opportunity to respond prior to the court issuing its order, the Brossarts suffered no prejudice from the failure to promptly comply with § 28-20.1-03(2).” (7)

“Each party is allowed to serve 50 interrogatories on any other party . . . Parties cannot evade this limitation by joining as “subparts” questions that seek information about discrete separate subjects.” (8)

“The Brossarts’ motion for relief from judgment was a collateral attack on the merits of the unappealed federal judgment.” (11)

FACTUAL BACKGROUND

A federal district court entered an unappealed judgment against the Brossarts awarding the defendants \$8,153.08 in costs. The defendants filed the federal judgment in North Dakota state court, but neither the clerk nor the defendants initially mailed notice of filing to the Brossarts as required by the Uniform Enforcement of Foreign Judgments Act; instead, the defendants' attorney electronically served notice on counsel who had represented the Brossarts in the federal litigation. The defendants later served identical post-judgment interrogatories on each Brossart, and the Brossarts refused to answer while challenging the validity and enforceability of the federal judgment. The state district court compelled answers, denied relief from judgment, and awarded attorney's fees after finding the plaintiffs' positions frivolous.

PROCEDURAL HISTORY

The plaintiffs previously sued the defendants in federal district court under 42 U.S.C. § 1983 and state law. After summary judgment for the defendants, the federal court entered judgment awarding the defendants \$8,153.08 in costs, which the plaintiffs did not appeal. The defendants filed that federal judgment in Nelson County District Court under North Dakota's Uniform Enforcement of Foreign Judgments Act and later served interrogatories in aid of execution. The district court compelled answers, denied relief from judgment, and awarded \$2,340 in attorney's fees; the North Dakota Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- PHI Financial Services v. Johnston Law Office, P.C., 2016 ND 114, 881 N.W.2d 216
- Western Horizons Living Center v. Feland, 2014 ND 175, 853 N.W.2d 36
- Smith v. Ponderosa Realty & Development, Inc., 609 P.2d 103 (Ariz. Ct. App. 1980)
- The Cadle Co. II, Inc. v. Hubbard, 329 S.W.3d 706 (Mo. Ct. App. 2010)
- Concannon v. Hampton, 584 P.2d 218 (Okla. 1978)
- Beck v. Smith, 296 N.W.2d 886 (N.D. 1980)
- Wilkens v. Westby, 2019 ND 186, 931 N.W.2d 229
- Mertz v. City of Elgin, 2011 ND 148, 800 N.W.2d 710

- *Riemers v. Jaeger*, 2018 ND 192, 916 N.W.2d 113
- *Dakota Heritage Bank v. Iacone*, 2014 ND 150, 849 N.W.2d 219
- *Bradfield v. Donahue*, No. 13-1310-JDT-egb, 2016 WL 5661855 (W.D. Tenn. Sept. 29, 2016)
- *Semsroth v. City of Wichita*, No. 06-2376-KHV-DJW, 2008 WL 1924945 (D. Kan. Apr. 28, 2008)
- *Heller v. Production Credit Association of Minot*, 462 N.W.2d 125 (N.D. 1990)
- *Rath v. Rath*, 2016 ND 46, 876 N.W.2d 474
- *Estate of Pedro v. Scheeler*, 2014 ND 237, 856 N.W.2d 775
- *North Dakota Private Investigative & Security Board v. TigerSwan, LLC*, 2019 ND 219, 932 N.W.2d 756
- *Kuntz v. State*, 2019 ND 46, 923 N.W.2d 513
- *In re Estate of Hogan*, 2019 ND 141, 927 N.W.2d 474
- *American Standard Life & Accident Insurance Co. v. Speros*, 494 N.W.2d 599 (N.D. 1993)
- *1st Summit Bank v. Samuelson*, 1998 ND 113, 580 N.W.2d 132
- *Gray v. North Dakota Game & Fish Department*, 2005 ND 204, 706 N.W.2d 614
- *Darling & Co. v. Burchard*, 69 N.D. 212, 284 N.W. 856 (1939)
- *Shary v. Eszlinger*, 45 N.D. 133, 176 N.W. 938 (1920)
- *Miller v. Eloie Farms, Inc.*, 625 P.2d 332 (Ariz. Ct. App. 1980)
- *Sparaco v. Sparaco*, 765 N.Y.S.2d 683 (N.Y. App. Div. 2003)
- *Bank of America, N.A. v. Dasovich*, 415 P.3d 547 (Okla. Civ. App. 2017)