

SUPREME COURT OF NORTH DAKOTA

Wagner v. Miskin

660 N.W.2d 593 (N.D. 2003) · No. No. 20020200 · Decided May 6, 2003

SUMMARY

The Supreme Court of North Dakota affirmed a \$3 million jury verdict for libel, slander, and intentional interference with a business relationship. The court rejected the appellee's motion to dismiss, held that the appellant's claims concerning privilege and Internet jurisdiction could not warrant reversal on the record, and concluded that the district court properly exercised jurisdiction. The court also held that the incomplete appellate transcript prevented meaningful review of several alleged errors.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Vande Walle, Chief Justice; Carol Ronning Kapsner; Mary Muehlen Maring; William A. Neumann; Dale V. Sandstrom; Vande Walle
JURISDICTION	North Dakota
DECIDED	May 6, 2003
DOCKET	No. 20020200
DISPOSITION	affirmed
PROCEDURAL POSTURE	Miskin appealed from a judgment entered on a jury verdict awarding Wagner \$3,000,000 for libel, slander, and intentional interference with a business relationship.
STANDARD OF REVIEW	The court declined to review alleged errors that could not be meaningfully and intelligently reviewed because of the incomplete transcript. It reviewed the jurisdictional issue on the record available and applied principles governing personal jurisdiction and invited error.
PRECEDENTIAL VALUE	published
PARTIES	Glenda Miskin v. John Wagner

TOPICS

- defamation
- intentional interference with expectancy
- personal jurisdiction
- appellate procedure
- damages

PRACTICE AREAS

defamation

personal jurisdiction

appellate procedure

intentional interference with business relationship

damages

QUESTIONS PRESENTED

1. Whether Wagner's appeal should be dismissed under North Dakota Rule of Civil Procedure 12(b) or because it was allegedly frivolous and lacked a transcript.
2. Whether Miskin's statements connected with a University of North Dakota administrative hearing were absolutely privileged.
3. Whether Miskin invited any error concerning the treatment of evidence from the administrative hearing.
4. Whether the North Dakota district court had personal jurisdiction over Miskin for Internet publications and other communications directed toward North Dakota.
5. Whether the incomplete appellate record required the court to decline review of Miskin's remaining assignments of error.

HOLDINGS

1. A motion to dismiss an appeal under N.D.R.Civ.P. 12(b) is procedurally improper because civil procedure rules govern district-court proceedings, while appeals are governed by the North Dakota Rules of Appellate Procedure. The court denied the motion and reached the merits.
2. An appellant who fails to provide a complete transcript bears the consequences of that failure, and the Supreme Court will decline to review alleged errors when the appellate record does not permit meaningful and intelligent review.
3. The court did not grant Miskin the requested broad privilege-based relief because Wagner did not allege that he was defamed at the hearing, the record did not show that he claimed damages arising from the hearing, and an absolute privilege does not permit unlimited republication of allegedly defamatory statements.
4. The district court did not err in exercising jurisdiction over Miskin. The available record showed that her website particularly and directly targeted North Dakota and Wagner, a North Dakota resident, and the claims also involved communications and conduct occurring in North Dakota.
5. Miskin could not obtain reversal based on the asserted hearing-related error because she invited any possible error by opposing exclusion of evidence from the hearing and seeking to use that evidence.

KEY QUOTATIONS

"We have a strong preference for deciding cases on the merits." (at 596)

"An appellant assumes the consequences and the risk for the failure to file a complete transcript. If the record on appeal does not allow for a meaningful and intelligent review of alleged error, we will decline review of the issue." (at 596)

"Even an \"absolute\" privilege does not permit an individual to categorically republish possibly defamatory statements without consequence." (at 597)

"Contrary to her assertion, we conclude from the record available to us that Miskin did particularly and directly target North Dakota with her website, specifically North Dakota resident John Wagner." (at 599)

FACTUAL BACKGROUND

Miskin was a student in a University of North Dakota physics class taught by Wagner. After a university committee found that she had stalked and harassed Wagner, disrupted university operations, and misused the computer system, she was indefinitely suspended. Wagner later sued, alleging that Miskin made defamatory statements and intentionally interfered with his business relationships through various communications, including Internet publications. A jury found for Wagner and awarded \$3,000,000 in damages.

PROCEDURAL HISTORY

Wagner filed suit in North Dakota district court in June 2000. The district court initially granted Wagner summary judgment but later vacated it because of concerns that Miskin had not received the summary-judgment papers. Wagner amended his complaint in June 2001, and the court dismissed Miskin's cross-complaint against the University of North Dakota and several employees. A jury returned a \$3,000,000 verdict for Wagner in April 2002, and the district court denied Miskin's post-judgment motions. The Supreme Court of North Dakota denied Wagner's motion to dismiss the appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- First Nat'l Bank v. Candee, 488 N.W.2d 391, 396 (N.D. 1992)
- Lake Region Credit Union v. Crystal Pure Water, 502 N.W.2d 524, 526 (N.D. 1993)
- State v. Clark, 2001 ND 194, ¶ 5, 636 N.W.2d 660
- Owan v. Kindel, 347 N.W.2d 577, 579 (N.D. 1984)
- Rykowsky v. Dickinson Public School Dist. # 1, 508 N.W.2d 348, 351 (N.D. 1993)
- Soentgen v. Quain & Ramstad Clinic, 467 N.W.2d 73, 78 (N.D. 1991)
- Pulkrabek v. Sletten, 557 N.W.2d 225, 228 (N.D. 1996)
- World Wrestling Fed'n Entm't, Inc. v. Bozell, 142 F. Supp. 2d 514, 534 (S.D.N.Y. 2001)
- Brandt v. Milbrath, 2002 ND 117, ¶ 27, 647 N.W.2d 674
- Dillon v. Nissan Motor Co., 986 F.2d 263, 269 (8th Cir. 1993)
- Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)
- Calder v. Jones, 465 U.S. 783, 789, 791 (1984)
- Young v. New Haven Advocate, 315 F.3d 256, 262-63 (4th Cir. 2002)
- Revell v. Lidov, 317 F.3d 467, 473 (5th Cir. 2002)

- Rodenburg v. Fargo-Moorhead YMCA, 2001 ND 139, ¶ 19, 632 N.W.2d 407
- Auction Effertz, Ltd. v. Schecher, 2000 ND 109, ¶¶ 7-8, 611 N.W.2d 173

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