

SUPREME COURT OF ILLINOIS

Dew-Becker v. Wu

2020 IL 124472 (Ill. 2020) · No. 124472 · Decided April 16, 2020

SUMMARY

The Illinois Supreme Court held that a head-to-head daily fantasy sports contest conducted through FanDuel was not gambling under Illinois law because its outcome was predominantly determined by skill. As a result, the plaintiff could not recover his \$100 loss under section 28-8(a) of the Criminal Code of 2012. The court affirmed the appellate court's judgment, while Justice Karmeier dissented.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Chief Justice Anne M. Burke; Justice Kilbride; Justice Garman; Justice Theis; Justice Neville; Justice Karmeier
JURISDICTION	Illinois
DECIDED	April 16, 2020
DOCKET	124472
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from a judgment for defendant after a bench trial in an action seeking recovery of gambling losses under section 28-8(a) of the Illinois Criminal Code. The appellate court affirmed, and the Illinois Supreme Court granted plaintiff's petition for leave to appeal.
STANDARD OF REVIEW	De novo review of the statutory-interpretation issue.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; binding statewide precedent.
PARTIES	Colin Dew-Becker v. Andrew Wu

TOPICS

- gambling
- statutory interpretation
- plain meaning rule
- remedies
- appellate procedure

PRACTICE AREAS

- Gambling law
- Statutory interpretation
- Appellate procedure
- Remedies

QUESTIONS PRESENTED

1. Whether section 28-8(a) permits a gambling loser to recover from the winner when a third-party Internet intermediary facilitated the contest.
2. Whether the use of screen names or the Internet makes section 28-8(a) per se inapplicable to daily fantasy sports contests.
3. Whether a head-to-head daily fantasy sports contest is a bona fide contest predominantly determined by skill and therefore exempt from the statutory definition of gambling under section 28-1(b)(2).

HOLDINGS

1. Section 28-8(a) does not require a direct connection between the loser and winner that excludes third-party assistance or intermediation. The statute requires only that one person lose by gambling to another person.
2. Section 28-8(a) is not per se inapplicable to Internet-based DFS contests merely because participants may use screen names or because identifying the winner may require discovery.
3. Illinois adopts the predominant-factor test to determine whether a contest is predominantly a game of skill and therefore falls within the section 28-1(b)(2) exception to gambling.
4. The head-to-head NBA DFS contest at issue was predominantly determined by skill and therefore was not gambling under sections 28-1(a)(1) and 28-1(b)(2). Because Dew-Becker did not lose money while gambling, he could not recover under section 28-8(a).

KEY QUOTATIONS

“Courts are not free to read into a statute exceptions, limitations, or conditions the legislature did not express.” (¶ 14)

“We find, however, that the predominate factor test is the most appropriate.” (¶ 25)

“Because the outcomes of head-to-head DFS contests are predominately skill based, we conclude that plaintiff was not engaged in “gambling” with defendant as required under section 28-8(a).” (¶ 28)

FACTUAL BACKGROUND

Dew-Becker and Wu each paid a \$109 entrance fee to participate in a two-person FanDuel daily fantasy basketball contest. Dew-Becker selected nine NBA players for his virtual roster, Wu selected a competing roster, and Wu won 221.1 to 96.3, receiving the \$200 prize while FanDuel retained \$18. Dew-Becker sought to recover his \$100 loss under section 28-8(a), alleging that the DFS contest was illegal gambling.

PROCEDURAL HISTORY

Dew-Becker sued Wu in the Circuit Court of Cook County to recover \$100 allegedly lost in a two-person daily fantasy sports contest. The circuit court entered judgment for Wu, concluding section 28-8(a) did not permit recovery because FanDuel acted as an intermediary. The Illinois Appellate Court affirmed on the ground that the statute required a direct connection between the parties. The Illinois Supreme Court affirmed, but on the

different ground that the DFS contest was exempt from the statutory definition of gambling because it was predominantly determined by skill.

DISPOSITION

affirmed

CASES CITED

- People v. Manning, 2018 IL 122081, ¶ 16
- People v. Alexander, 204 Ill. 2d 472, 485 (2003)
- Petersen v. Wallach, 198 Ill. 2d 439, 445 (2002)
- Illinois State Treasurer v. Illinois Workers' Compensation Commission, 2015 IL 117418, ¶ 21
- Zellers v. White, 208 Ill. 518 (1904)
- United States v. Resnick, 594 F.3d 562, 571 (7th Cir. 2010)
- Vinson v. Casino Queen, Inc., 123 F.3d 655, 657 (7th Cir. 1997)
- Hadley v. Doe, 2015 IL 118000
- Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund, 2018 IL 122793, ¶ 35
- Sonnenberg v. Amaya Group Holdings (IOM) Ltd., 810 F.3d 509, 510-11 (7th Cir. 2016)
- O'Brien v. Scott, 89 A.2d 280, 283 (N.J. Super. Ct. Ch. Div. 1952)
- Thole v. Westfall, 682 S.W.2d 33, 37 n.8 (Mo. Ct. App. 1984)
- Joker Club, LLC v. Hardin, 643 S.E.2d 626 (N.C. Ct. App. 2007)
- White v. Cuomo, No. 528026, 2020 WL 572843, at *4 (N.Y. App. Div. Feb. 6, 2020)
- State v. Gambling Device, 859 S.W.2d 519, 523 (Tex. App. 1993)
- Johnson v. McGregor, 157 Ill. 350, 353 (1895)
- State v. Globe-Democrat Publishing Co., 110 S.W.2d 705, 716-17 (Mo. 1937) (en banc)
- Schneider v. Turner, 130 Ill. 28, 42 (1889)
- Morrow v. State, 511 P.2d 127, 129 (Alaska 1973)
- In re Commitment of Simons, 213 Ill. 2d 523, 532 (2004)
- People v. Miller, 173 Ill. 2d 167, 205 (1996) (McMorrow, J., specially concurring)
- Jones v. United States, 548 A.2d 35, 42 (D.C. 1988)
- People v. Givens, 237 Ill. 2d 311, 324 (2010)
- Ruben v. Keuper, 127 A.2d 906, 909-10 (N.J. Super. Ct. Ch. Div. 1956)
- In re Request of the Governor for an Advisory Opinion, 12 A.3d 1104, 1112-14 (Del. 2009)
- Seattle Times Co. v. Tielsch, 495 P.2d 1366, 1369 (Wash. 1972) (en banc)
- Commonwealth v. Plissner, 4 N.E.2d 241, 244-45 (Mass. 1936)
- Banilla Games, Inc. v. Iowa Department of Inspections & Appeals, 919 N.W.2d 6, 10 (Iowa 2018)
- Opinion of the Justices, 795 So. 2d 630, 641 (Ala. 2001)
- Lucky Calendar Co. v. Cohen, 120 A.2d 107, 113 (N.J. 1956)

- Commonwealth v. Laniewski, 98 A.2d 215, 217 (Pa. Super. Ct. 1953)
- State v. Stroupe, 76 S.E.2d 313, 317 (N.C. 1953)
- Dillingham v. McLaughlin, 264 U.S. 370, 373 (1924)
- Commonwealth v. Dent, 2010 Pa. Super. 47, ¶¶ 22-23
- People v. Goossens, 2015 IL 118347, ¶ 9
- People ex rel. Madigan v. Wildermuth, 2017 IL 120763, ¶ 17
- Rushton v. Department of Corrections, 2019 IL 124552, ¶ 19
- People v. Mitchell, 111 Ill. App. 3d 1026, 1028 (1983)
- People v. Dugan, 125 Ill. App. 3d 820, 827-28 (1984), rev'd in part on other grounds, 109 Ill. 2d 8 (1985)
- People v. Webb, 2019 IL 122951, ¶ 17