

SUPREME COURT OF NEBRASKA

Candyland, LLC v. Nebraska Liquor Control Commission

Candyland, LLC v. Nebraska Liquor Control Comm., 306 Neb. 169 (2020) · No. No. S-19-535 · Decided June 19, 2020

SUMMARY

The Nebraska Supreme Court dismissed Candyland, LLC's appeal from the denial of its retail liquor license application for lack of subject matter jurisdiction. The court held that citizen objectors were parties of record under the Nebraska Liquor Control Act and that summons had to be served on those nongovernmental parties within 30 days after filing the petition for review. Because Candyland failed to timely serve the citizen objectors, the district court and Supreme Court lacked jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	June 19, 2020
DOCKET	No. S-19-535
DISPOSITION	dismissed
PROCEDURAL POSTURE	Candyland appealed the Nebraska Liquor Control Commission's denial of its application for a retail Class C liquor license to the Lancaster County District Court under the Administrative Procedure Act. The district court dismissed the petition for lack of subject matter jurisdiction because Candyland failed to serve summons on all parties of record, including citizen objectors, and denied Candyland's motion for a new trial. Candyland appealed to the Nebraska Supreme Court.
STANDARD OF REVIEW	A jurisdictional issue that does not involve a factual dispute is reviewed de novo as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Candyland, LLC, doing business as Kandi's v. Nebraska Liquor Control Commission, City of Omaha, Protestants, Citizen Objectors, and Interested Parties

TOPICS

judicial review of agency action

administrative law

appellate jurisdiction

service of process

statutory interpretation

PRACTICE AREAS

administrative law

appellate procedure

liquor licensing

civil procedure

QUESTIONS PRESENTED

1. Whether citizen objectors who protested Candyland's liquor-license application were parties of record required to be joined and served in an APA proceeding for review.
2. Whether service of summons on nongovernmental parties in an APA review proceeding was required within 30 days after filing the petition.
3. Whether the court should consider Candyland's constitutional challenge to Neb. Rev. Stat. § 25-508.01 despite the failure to preserve that issue.

HOLDINGS

1. Under the Nebraska Liquor Control Act, the statutory definition of party of record controls in an APA review of a Nebraska Liquor Control Commission proceeding. Each individual who protested issuance of the liquor license was therefore a party of record who had to be made a party and served.
2. To confer jurisdiction on a district court to review a final administrative decision under the APA, the appellant must file the petition and serve summons as required by the APA.
3. Service on nongovernmental entities under Neb. Rev. Stat. § 84-917(2)(a)(i) must be completed within 30 days after filing the petition for review.
4. The court would not consider Candyland's constitutional challenge to Neb. Rev. Stat. § 25-508.01 because the issue was not preserved.

KEY QUOTATIONS

“We find that the plain meaning of the statute requires that summons be served within 30 days of the filing of the petition in order to perfect an appeal under the [APA].” (177)

“By failing to serve the summons and a copy of the petition on the citizen objectors within 30 days, it failed to timely petition for review.” (178)

FACTUAL BACKGROUND

Candyland applied to the Nebraska Liquor Control Commission for a retail Class C liquor license for a business in Omaha. The Omaha City Council recommended denial, and hundreds of protestants, citizen objectors, and interested parties appeared before the Commission. After the Commission denied the application, Candyland sought judicial review but did not serve summons on the citizen objectors.

PROCEDURAL HISTORY

Candyland applied for a retail Class C liquor license, but the Commission denied the application after a hearing at which hundreds of protestants and citizen objectors appeared. Candyland filed a petition for review naming the Commission, the City of Omaha, and the protestants and citizen objectors, but served summons only on the Commission and the City. The district court denied service by publication, dismissed for lack of subject matter jurisdiction, and denied a motion for new trial. The Nebraska Supreme Court affirmed the jurisdictional result by dismissing the appeal.

DISPOSITION

dismissed

CASES CITED

- Retroactive, Inc. v. Nebraska Liquor Control Comm., 298 Neb. 936, 906 N.W.2d 328 (2018)
- In re Estate of Evertson, 295 Neb. 301, 889 N.W.2d 73 (2016)
- Kozal v. Nebraska Liquor Control Comm., 297 Neb. 938, 902 N.W.2d 147 (2017)
- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- Northern States Beef v. Stennis, 2 Neb. App. 340, 509 N.W.2d 656 (1993)
- State v. Lotter, 301 Neb. 125, 917 N.W.2d 850 (2018)
- Cargill Meat Solutions v. Colfax Cty. Bd. of Equal., 281 Neb. 93, 798 N.W.2d 823 (2011)
- Leach v. Dept. of Motor Vehicles, 213 Neb. 103, 327 N.W.2d 615 (1982)
- State v. Vann, ante p. 91, ___ N.W.2d ___ (2020)
- State v. Kruse, 303 Neb. 799, 931 N.W.2d 148 (2019)
- Siedlik v. Nissen, 303 Neb. 784, 931 N.W.2d 439 (2019)
- Davis v. State, 297 Neb. 955, 902 N.W.2d 165 (2017)