

SUPREME COURT OF NEBRASKA

TransCanada Keystone Pipeline, LP v. Tanderup

305 Neb. 493 (2020) · No. Nos. S-19-493 through S-19-508 · Decided April 10, 2020

SUMMARY

The Nebraska Supreme Court considered consolidated appeals arising from condemnation proceedings in which landowners sought attorney fees and costs after TransCanada voluntarily dismissed its actions. The court held that the county court plainly erred by failing to conduct the evidentiary hearing required by the district court's specific remand mandate. It affirmed the district court's judgments, emphasizing that a lower court must comply with the scope of an appellate mandate and may not alter or circumvent it.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Miller-Lerman, J., participating on briefs
JURISDICTION	Nebraska
DECIDED	April 10, 2020
DOCKET	Nos. S-19-493 through S-19-508
DISPOSITION	affirmed
PROCEDURAL POSTURE	TransCanada appealed consolidated orders of the Antelope County District Court, which affirmed the reversal of county court decisions denying condemnees' motions for attorney fees and costs and remanded for evidentiary hearings. The Nebraska Supreme Court reviewed whether the county court plainly erred by failing to follow the district court's mandate requiring a rehearing on the merits.
STANDARD OF REVIEW	Construction of an appellate mandate is reviewed de novo as a question of law. When the district court reviewed for plain error because no statement of errors was filed, the Nebraska Supreme Court likewise reviewed for plain error only. Plain error is an error plainly evident from the record, not complained of at trial, that prejudicially affects a substantial right and is sufficiently serious that leaving it uncorrected would cause a miscarriage of justice or damage the integrity, reputation, and fairness of the judicial process.

PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	TransCanada Keystone Pipeline, LP v. Arthur R. Tanderup and Helen J. Tanderup, Frank C. Morrison and Lynn H. Morrison, Jerry Carpenter and Charlayne Carpenter, Germaine G. Berry, Cottonwood Ridge LLC, Cheri G. Blocher and Michael J. Blocher, Frankie Maughan, Todd J. Stelling and Lisa J. Stelling, Karen G. Berry, Richard E. Stelling, Joshua R. Stelling, Robert R. Krutz and Beverly J. Krutz, CHP 4 Farms, LLC, Carol J. Manganaro, Personal Representative of the Estate of Florian W. Dittrich, Carol J. Manganaro, Tree Corners Farm, LLC, John Doe and other appellees named in the consolidated cases

TOPICS

appellate procedure

standard of review

attorney fees

costs

eminent domain

PRACTICE AREAS

appellate procedure

civil procedure

eminent domain

attorney fees

costs

QUESTIONS PRESENTED

1. Whether the county court plainly erred by failing to conduct the evidentiary hearing required by the district court's remand orders.
2. Whether the district court's remand for a rehearing on the merits was a specific mandate or a general remand subject to the exception allowing judgment without a rehearing when undisputed facts permit only one result.
3. Whether the county court could limit the evidence at the rehearing to the affidavits presented at the original hearing based on the similarity of these cases to a prior case.
4. Whether the unappealed district court remand orders became the law of the case and required the county court to conduct an evidentiary hearing.

HOLDINGS

1. The county court plainly erred by failing to conduct the new evidentiary hearing required by the district court's specific remand orders. A lower court has an unqualified duty to follow an appellate mandate and may not disregard or alter the action expressly ordered on remand.
2. The general-remand exception did not apply. The district court's orders were specific mandates, not general remands, and the county court could not determine without receiving evidence that only one judgment was possible.
3. The county court lacked authority to limit the rehearing's evidence to the contents of the original affidavits. The parties were entitled to a meaningful opportunity to present whatever evidence was

relevant to the attorney-fee motions, whether similar to or different from the evidence originally submitted.

4. The unappealed district court orders remanding the matters for rehearing became final and the law of the case, regardless of whether those orders were legally correct.

KEY QUOTATIONS

“When a particular judgment is directed by the appellate court, the lower court is not acting of its own motion, but in obedience to the order of its superior. What that superior says it shall do, it must do, and that alone.” (503)

“A district court has an unqualified duty to follow the mandate issued by an appellate court and must enter judgment in conformity with the opinion and judgment of the appellate court.” (510)

“Disregarding an appellate court’s mandate affects a substantial right of the litigant the mandate was issued in favor of.” (511)

FACTUAL BACKGROUND

TransCanada initiated condemnation proceedings for an oil pipeline and later voluntarily dismissed the actions without prejudice. The condemnees moved for attorney fees and costs under § 76-726 and supported their motions with affidavits; the county court initially awarded fees, but the district court held the affidavits inadmissible hearsay and remanded for a rehearing on the merits. Instead of conducting the mandated evidentiary hearing, the county court concluded that a prior Nebraska Supreme Court decision made the existing evidence insufficient and denied the fee motions without a new hearing.

PROCEDURAL HISTORY

TransCanada voluntarily dismissed condemnation actions without prejudice after pursuing an alternative pipeline approval route. The condemnees sought attorney fees and costs under Neb. Rev. Stat. § 76-726, and the county court initially awarded fees based principally on affidavits. The district court ruled the affidavits inadmissible hearsay and remanded for a rehearing on the merits. On remand, the county court declined to hold an evidentiary hearing and denied the fee motions, but the district court, reviewing for plain error because no statement of errors was filed, reversed and remanded for an evidentiary hearing. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Antelope County Court must conduct an evidentiary hearing on the condemnees' requests for attorney fees and costs, consider all relevant evidence, and make a final determination on those motions.

CASES CITED

- TransCanada Keystone Pipeline v. Nicholas Family, 299 Neb. 276, 908 N.W.2d 60 (2018)
- Jeffres v. Countryside Homes, 220 Neb. 26, 367 N.W.2d 728 (1985)
- deNourie & Yost Homes v. Frost, 295 Neb. 912, 893 N.W.2d 669 (2017)
- State v. Henk, 299 Neb. 586, 909 N.W.2d 634 (2018)
- State v. Payne, 298 Neb. 373, 904 N.W.2d 275 (2017)
- Houser v. American Paving Asphalt, 299 Neb. 1, 907 N.W.2d 16 (2018)
- Molina v. Salgado-Bustamante, 21 Neb. Ct. App. 75, 837 N.W.2d 553 (2013)
- Robertson v. Jacobs Cattle Co., 292 Neb. 195, 874 N.W.2d 1 (2015)
- VanHorn v. Nebraska State Racing Comm., 273 Neb. 737, 732 N.W.2d 651 (2007)
- Jurgensen v. Ainscow, 160 Neb. 208, 69 N.W.2d 856 (1955)
- Bohmont v. Moore, 141 Neb. 91, 2 N.W.2d 599 (1942)
- Carpenter v. Cullan, 254 Neb. 925, 581 N.W.2d 72 (1998)
- State v. Dickinson, 63 Neb. 869, 89 N.W. 431 (1902)
- State v. White, 257 Neb. 943, 601 N.W.2d 731 (1999)