

SUPREME COURT OF NEBRASKA

Mooney v. Gordon Memorial Hospital District

268 Neb. 273 (2004) (Neb. 2004) · No. No. S-03-311 · Decided July 2, 2004

SUMMARY

The Supreme Court of Nebraska held that a plaintiff who knew of alleged judicial misconduct during a bench trial but failed to object, move for recusal, or seek a mistrial before submission of the case could not obtain a new trial based on that conduct after an adverse judgment. Applying the rule against silently tolerating an error and then asserting it after an unfavorable result, the court reversed the order granting a new trial and remanded with directions to reinstate the original judgment of dismissal.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Gerrard, J.; Hendry, C.J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Wright, J., participating on briefs
JURISDICTION	Nebraska
DECIDED	July 2, 2004
DOCKET	No. S-03-311
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a bench trial in a negligence action under the Political Subdivisions Tort Claims Act, the district court entered judgment for Gordon and dismissed Mooney's petition. The district court later granted Mooney's motion for new trial based on alleged judicial misconduct and recused the trial judge. Gordon appealed.
STANDARD OF REVIEW	An order granting a new trial is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gordon Memorial Hospital District, a Nebraska political subdivision, doing business as Gordon Countryside Care Center v. Yvonne Mooney, personal representative of the Estate of Ada I. Hamilton, deceased

TOPICS

- motion for new trial
- preservation of error
- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

torts

health law

municipal law

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by granting a motion for new trial based on alleged judicial misconduct that was known during trial but was not timely raised.
2. Whether a party in a bench trial must timely object to alleged judicial misconduct or move for recusal before submitting the case for disposition.
3. Whether the appellate court needed to reach Gordon's remaining assignments of error after determining that the motion for new trial was untimely.

HOLDINGS

1. A party may not remain silent about alleged judicial misconduct, gamble on a favorable result, and then seek a new trial after an adverse judgment; the objection or motion must be made before the case is submitted for disposition.
2. A trial judge should recuse when a reasonable person who knew the circumstances would question the judge's impartiality under an objective standard of reasonableness, but the record here did not satisfy that standard.

KEY QUOTATIONS

"One cannot silently tolerate error, gamble on a favorable result, and then complain that one guessed wrong." (257)

"One cannot know of improper judicial conduct, gamble on a favorable result by remaining silent as to that conduct, and then complain that he or she guessed wrong and does not like the outcome." (258)

FACTUAL BACKGROUND

Ada I. Hamilton died after a fall at the Gordon Community Care Center, where she resided. Her personal representative, Yvonne Mooney, alleged that negligence by Gordon's employees caused Hamilton's death. During the bench trial, the trial judge made comments to counsel and expressed criticism of an expert's deposition testimony; Mooney did not object, move for mistrial, or seek recusal before the case was submitted. After judgment was entered for Gordon, Mooney relied on those incidents in seeking a new trial.

PROCEDURAL HISTORY

Mooney sued Gordon under Nebraska's Political Subdivisions Tort Claims Act, alleging that negligence by Gordon's employees caused her mother's death. Following a bench trial, the district court found for Gordon and dismissed the petition. Mooney moved for a new trial based on alleged unfairness and judicial misconduct that had not been raised during trial; the district court granted the motion. Gordon appealed after a successor judge denied its motions for reconsideration or to alter or amend the order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to reinstate the order of judgment of dismissal originally filed on January 27, 2003.

CASES CITED

- Bowley v. W.S.A., Inc., 264 Neb. 6, 645 N.W.2d 512 (2002)
- Hass v. Neth, 265 Neb. 321, 657 N.W.2d 11 (2003)
- Wolfe v. Abraham, 244 Neb. 337, 506 N.W.2d 692 (1993)
- Martindale v. Weir, 254 Neb. 517, 577 N.W.2d 287 (1998)
- State v. Jacob, 253 Neb. 950, 574 N.W.2d 117 (1998)
- State v. Jenson, 232 Neb. 403, 440 N.W.2d 686 (1989)
- Pitt v. Checker Cab Co., 217 Neb. 600, 350 N.W.2d 507 (1984)
- Jim's, Inc. v. Willman, 247 Neb. 430, 527 N.W.2d 626 (1995)
- Gibilisco v. Gibilisco, 263 Neb. 27, 637 N.W.2d 898 (2002)
- In re Interest of Mainor T. & Estela T., 267 Neb. 232, 674 N.W.2d 442 (2004)
- State v. Hubbard, 267 Neb. 316, 673 N.W.2d 567 (2004)
- Spanish Oaks v. Hy-Vee, 265 Neb. 133, 655 N.W.2d 390 (2003)