

SUPREME COURT OF NEBRASKA

Zelenka v. Pratte

300 Neb. 100 (2018) · No. S-17-086 · Decided June 1, 2018

SUMMARY

The Nebraska Supreme Court reviewed a replevin dispute over a French bulldog and other personal property following the end of a domestic relationship. The court affirmed the finding that the dog was an inter vivos gift to Zelenka, reversed the ruling regarding three lamps and a couch, and remanded for entry of judgment consistent with its opinion. It affirmed the finding that Zelenka failed to prove ownership of the remaining disputed items.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Riedmann, Judge; Martinez, District Judge
JURISDICTION	Nebraska
DECIDED	June 1, 2018
DOCKET	S-17-086
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Pratte appealed, and Zelenka cross-appealed, from a Douglas County District Court judgment following a bench trial in an action pleaded as conversion but tried by implied consent as replevin.
STANDARD OF REVIEW	Conversion and replevin are law actions. In a law action tried to the bench, the district court's factual findings and disposition have the effect of a jury verdict and will not be set aside unless clearly wrong.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision.
PARTIES	Jason D. Pratte v. Peter Zelenka

TOPICS

- replevin
- appellate procedure
- standard of review
- remedies
- civil procedure

PRACTICE AREAS

- civil procedure
- property law
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the action should be treated as one for replevin even though the complaint was styled as conversion.
2. Whether Zelenka proved by the required standard that Pavlov was a valid inter vivos gift and that he was entitled to immediate possession of the dog.
3. Whether the district court clearly erred in finding that Zelenka failed to prove ownership of the other disputed personal property.
4. Whether Pratte proved by clear, direct, positive, express, and unambiguous evidence that the disputed lamps and couch were gifts from Zelenka.

HOLDINGS

1. Because the parties tried the case as one seeking return of specific personal property and did so by implied consent, the action was treated as one for replevin under Neb. Ct. R. Pldg. § 6-1115(b).
2. A replevin plaintiff must prove by a preponderance of the evidence that, when the action commenced, the plaintiff owned the property, was entitled to immediate possession, and the defendant wrongfully detained it.
3. Zelenka proved by clear, direct, positive, express, and unambiguous evidence that Pavlov was an inter vivos gift from Pratte, including donative intent, delivery, and acceptance.
4. The district court clearly erred in finding that Zelenka failed to prove ownership of the Niche leather couch, the two Niche lamps, and the French bulldog lamp; those items were to be returned to Zelenka. The court did not clearly err concerning the remaining items because the evidence was contradictory.

KEY QUOTATIONS

“In an action at law tried to the bench, a district court’s factual findings and disposition have the same effect as a jury verdict and will not be set aside unless clearly wrong.” (105)

“In a replevin case, the plaintiff has the burden to prove by a preponderance of the evidence that at the time of the commencement of the action (1) he was the owner of the property sought, (2) he was entitled to immediate possession of the property, and (3) the defendant wrongfully detained it.” (106)

“To make a valid inter vivos gift, there must be an intention to transfer title to property, delivery by the donor, and acceptance by the donee.” (107)

“We conclude Zelenka met his burden of proving Pavlov was a gift from Pratte.” (108)

FACTUAL BACKGROUND

Pratte and Zelenka lived together from 2011 until their separation in June 2015. Zelenka claimed that Pratte gave him a French bulldog, Pavlov, as a birthday gift and that Pratte wrongfully retained the dog and other personal property after Zelenka moved out. The trial evidence supported Zelenka's account concerning the dog through testimony from Zelenka, his mother, and the breeder, but the parties presented contradictory evidence concerning ownership of most of the other items.

PROCEDURAL HISTORY

Zelenka sued Pratte seeking return of personal property, primarily a French bulldog that Zelenka claimed was a gift. After a two-day bench trial, the district court ordered the dog returned to Zelenka but found Zelenka failed to prove ownership of the other disputed property. Pratte appealed the finding concerning the dog, and Zelenka cross-appealed regarding the remaining property. The Nebraska Supreme Court affirmed in part, reversed in part, and remanded with directions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand with directions to enter judgment consistent with the opinion, including return to Zelenka of the Niche leather couch, the two Niche table lamps, and the French bulldog lamp.

CASES CITED

- Gallner v. Larson, 291 Neb. 205, 865 N.W.2d 95 (2015)
- Allemang v. Kearney Farm Ctr., 251 Neb. 68, 554 N.W.2d 785 (1996)
- Pinnacle Bank v. Darlan Constr. Co., 270 Neb. 978, 709 N.W.2d 635 (2006)
- Blinn v. Beatrice Community Hosp. & Health Ctr., 270 Neb. 809, 708 N.W.2d 235 (2006)
- Packett v. Lincolnland Towing, 227 Neb. 595, 419 N.W.2d 149 (1988)
- Ferer v. Aaron Ferer & Sons Co., 273 Neb. 701, 732 N.W.2d 667 (2007)
- In re Estate of Lamplough, 270 Neb. 941, 708 N.W.2d 645 (2006)
- Kennedy v. Nelson, 125 Neb. 185, 249 N.W. 546 (1933)