SOUTH DAKOTA SUPREME COURT

Dan Nelson Automotive, Inc. v. Viken

2005 SD 109 · No. #23363 · Decided November 2, 2005

SUMMARY

The South Dakota Supreme Court reviewed a dismissal of a declaratory judgment action concerning the application of South Dakota motor vehicle excise tax statutes to repossessed or returned vehicles. The Court held that administrative exhaustion and primary jurisdiction doctrines did not preclude the prospective declaratory action, and that the State was joined through the Secretary of Revenue's official-capacity designation. The Court further held that the State was a person under the Uniform Declaratory Judgment Act and that sovereign immunity did not bar the requested declaratory relief.

CASE DETAILS

COURT	South Dakota Supreme Court
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Konenkamp, Justice; Meierhenry, Justice; Sabers, Justice
JURISDICTION	South Dakota
DECIDED	November 2, 2005
DOCKET	#23363
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the dismissal of their declaratory-judgment action seeking a prospective interpretation of South Dakota motor-vehicle excise-tax statutes.
STANDARD OF REVIEW	A motion-to-dismiss ruling is reviewed to determine whether the pleader was entitled to judgment as a matter of law; questions of law are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Dan Nelson Automotive, Inc., d/b/a Dan Nelson Isuzu, South Dakota Acceptance Corporation, d/b/a CNAC v. Gary R. Viken, in his individual and official capacities as Secretary of Revenue

TOPICS

sales and use tax · declaratory judgment · administrative procedure act · statutory interpretation · constitutional law

PRACTICE AREAS

tax · administrative law · civil procedure · constitutional law · remedies

QUESTIONS PRESENTED

1. Whether administrative remedies had to be exhausted before the circuit court could hear a declaratory action seeking interpretation of the motor-vehicle excise-tax statutes.
2. Whether the State was an indispensable party and, if so, whether the official-capacity suit against the Secretary joined the State.
3. Whether the State was a person under South Dakota's Uniform Declaratory Judgment Act.
4. Whether sovereign immunity barred a prospective declaratory action interpreting tax statutes and challenging the Secretary's authority to impose the tax.

HOLDINGS

1. Administrative exhaustion was not required because no administrative decision had occurred, the Department did not have exclusive primary jurisdiction to interpret the tax statutes, and plaintiffs sought prospective declaratory relief rather than a tax refund.
2. The State was an indispensable party, but the official-capacity action against the Secretary joined the State because the State was the real party in interest.
3. The State is a person within the meaning of SDCL 21-24-2 and may be joined as a defendant in a declaratory-judgment action.
4. Sovereign immunity did not bar plaintiffs' prospective declaratory action interpreting the excise-tax statutes because the action sought neither monetary relief from the State treasury nor affirmative control over a lawful discretionary act by a state official.

KEY QUOTATIONS

> *"Therefore, in accordance with Jansen, Agar I, Arneson, Dakota Sys., and SDCL 15-6-57, we conclude that the doctrine of primary jurisdiction did not preclude this action for a prospective interpretation of the excise tax statutes."* (¶20)

> *"Therefore, we hold that the State is a "person" within the meaning of SDCL 21-24-2, and as a result, the Declaratory Judgment Act does not preclude the state's joinder as a party defendant."* (¶26)

> *"Because such actions are not precluded by sovereign immunity, Nelson's declaratory judgment action was not barred."* (¶31)

FACTUAL BACKGROUND

Nelson sells motor vehicles, some through installment contracts, and CNAC finances those sales. South Dakota imposes a three-percent excise tax on the purchase price of motor vehicles. The dispute concerned vehicles that were returned or repossessed before the initial installment buyer paid the full contract price, and plaintiffs sought a prospective declaration that the tax could not be imposed on amounts they never received. Plaintiffs did not seek a refund of taxes previously paid.

PROCEDURAL HISTORY

Nelson and CNAC sued the Secretary of Revenue in circuit court under South Dakota's Uniform Declaratory Judgment Act. The circuit court dismissed the action without interpreting the tax statutes, concluding that administrative remedies had not been exhausted, the State was an indispensable party that had not been joined, and the State could not be sued for declaratory relief. The South Dakota Supreme Court reversed and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The circuit court was directed to proceed with the declaratory action rather than dismiss it on exhaustion, joinder, or sovereign-immunity grounds.

CASES CITED

- Springer v. Black, 520 NW2d 77 (SD 1994)
- Estate of Billings v. Deadwood Congregation of Jehovah Witnesses, 506 NW2d 138 (SD 1993)
- In re P.A.M., 505 NW2d 395 (SD 1993)
- Rusch v. Kauker, 479 NW2d 496 (SD 1991)
- Permann v. Department of Labor, Unemployment Insurance Division, 411 NW2d 113 (SD 1987)
- Mordhorst v. Egert, 88 SD 527, 223 NW2d 501 (1974)
- Boever v. South Dakota Board of Accountancy, 526 NW2d 747 (SD 1995)
- Agar School District v. McGee, 527 NW2d 282 (SD 1995)
- Jansen v. Lemmon Federal Credit Union, 1997 SD 44, 562 NW2d 122
- Maryland-National Capital Park & Planning Commission v. Washington National Arena, 386 A2d 1216 (Md 1978)
- Arneson v. Baker, 76 SD 262, 77 NW2d 325 (1956)
- Agar School District v. McGee, 1997 SD 31, 561 NW2d 318
- Dakota Systems, Inc. v. Viken, 2005 SD 27, 694 NW2d 23
- Rocky Mountain Oil & Gas Ass'n v. Wyoming, 645 P2d 1163 (Wyo. 1982)
- Pennington County v. State ex rel. Unified Judicial System, 2002 SD 31, 641 NW2d 127
- Kneip v. Herseth, 87 SD 642, 214 NW2d 93 (1974)
- Wulf v. Senst, 2003 SD 105, 669 NW2d 135

- Casazza v. State, 2000 SD 120, 616 NW2d 872
- White Eagle Oil & Refining Co. v. Gunderson, 48 SD 608, 205 NW 614 (1925)
- Miller v. Egan, 265 Conn. 301, 828 A2d 549 (2003)
- Northwall v. Department of Revenue, 263 Neb. 1, 637 NW2d 890 (2002)
- Cobb v. Harrington, 144 Tex. 360, 190 SW2d 709 (1945)
- Berlowitz v. Roach, 252 Wis. 61, 30 NW2d 256 (1947)
- Will v. Michigan Department of State Police, 491 U.S. 58 (1989)
