

NEBRASKA SUPREME COURT

State ex rel. Veskrna v. Steel

296 Neb. 581 (2017) · No. No. S-16-118 · Decided May 5, 2017

SUMMARY

The Nebraska Supreme Court affirmed a writ of mandamus requiring disclosure of Judicial Branch Education records under Nebraska's public records statutes. The court held that a statute authorizing development of confidentiality rules did not itself expressly exempt the records from disclosure, and that disclosure did not unduly interfere with an essential function of the judicial branch. The court recognized a narrowly tailored judicial deliberative process privilege applicable on a case-by-case basis.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.; Riedmann, Judge
JURISDICTION	Nebraska
DECIDED	May 5, 2017
DOCKET	No. S-16-118
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by the State Court Administrator from a district court judgment granting a writ of mandamus requiring disclosure of Judicial Branch Education records under Nebraska's public records statutes; cross-appeal by Veskrna concerning admission of part of an affidavit.
STANDARD OF REVIEW	Mandamus is a law action and an extraordinary remedy. In a bench trial of a law action, factual findings have the effect of a jury verdict and are reviewed for clear error; whether to grant mandamus is reviewed for abuse of discretion. Conclusions of law concerning the judicial deliberative process privilege are reviewed de novo, and factual findings concerning that privilege are reviewed for clear error.
PRECEDENTIAL VALUE	published state supreme court opinion
PARTIES	Corey R. Steel, State Court Administrator v. State of Nebraska ex rel. Les W. Veskrna, M.D.

TOPICS

separation of powers

constitutional law

statutory interpretation

remedies

civil procedure

PRACTICE AREAS

constitutional law

public records

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether Nebraska's public records statutes expressly exempted the requested Judicial Branch Education records based on a statute authorizing development of rules concerning confidentiality and an unwritten committee policy.
2. Whether applying Nebraska's public records statutes to the requested records violated separation of powers by unduly interfering with the judiciary's essential functions.
3. Whether the requested Judicial Branch Education records were protected by the judicial deliberations privilege.
4. Whether the district court erred in admitting paragraph 12 of an affidavit submitted by Steel's witness.

HOLDINGS

1. A statute authorizing the Judicial Branch Education advisory committee to develop rules concerning confidentiality does not itself expressly provide that Judicial Branch Education records shall not be made public. Because no confidentiality rule had been adopted and an unwritten committee policy was insufficient, the requested records were public records under Neb. Rev. Stat. § 84-712.01(1).
2. The public records statutes do not override the constitutional prohibition against one branch unduly interfering with another branch's essential functions, but disclosure of the Judicial Branch Education records in exhibit 4 did not meaningfully impair an essential function of the judicial branch.
3. The Nebraska Supreme Court adopted a narrowly tailored but absolute judicial deliberations privilege covering a judge's mental impressions and thought processes in reaching a judicial decision, including confidential communications among judges and between judges and court staff relating to deliberations in particular cases. The privilege did not apply to the Judicial Branch Education records in exhibit 4 because they did not relate to particular cases under deliberation.
4. Whether Judicial Branch Education records must remain confidential to preserve essential judicial functions must be determined case by case under adopted court rules, the judicial deliberations privilege, and state constitutional separation-of-powers principles; the decision does not categorically classify all Judicial Branch Education records as confidential or public.

KEY QUOTATIONS

“An unwritten policy of the Committee to consider JBE records as confidential is not sufficient to establish the confidentiality of such records for purposes of the public records laws.” (596)

“We find that the proper constitutional balance requires a narrowly tailored, albeit absolute, judicial deliberations privilege.” (603)

“Whether preservation of the essential functions of the judicial branch requires the confidentiality of JBE records is to be determined on a case-by-case basis in accordance with existing rules promulgated by this court, the judicial deliberations privilege, and state constitutional principles respecting the proper balance between the coordinate branches.” (604)

FACTUAL BACKGROUND

Les W. Veskrna sought records concerning Judicial Branch Education programs on child custody and parenting time, including agendas, presenters, presentation materials, communications, and related documents. He clarified that he did not seek judges' attendance records, presenter ratings, or judges' questions and comments. Steel denied the request, relying on an unwritten confidentiality policy, separation of powers, and the judicial deliberative process privilege. The district court reviewed 12 records in camera and ordered disclosure of all but a portion of one judge's email.

PROCEDURAL HISTORY

Veskrna requested Judicial Branch Education records concerning judicial education programs on child custody and parenting time. After Steel denied access, the parties filed cross-motions for summary judgment in the Lancaster County District Court. The district court ordered disclosure of the requested records after in camera review, except for a redacted judge's email, and awarded costs and attorney fees. The Nebraska Supreme Court affirmed and did not reach Veskrna's cross-appeal because the judgment was affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. Unger v. State, 293 Neb. 549, 878 N.W.2d 540 (2016)
- Steckelberg v. Nebraska State Patrol, 294 Neb. 842, 885 N.W.2d 44 (2016)
- Moyer, O'Brien, etc. v. National R.R. Passenger, 376 F.3d 1270 (11th Cir. 2004)
- Freudenthal v. Cheyenne Newspapers, Inc., 233 P.3d 933 (Wyo. 2010)
- In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007)
- Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977)
- State v. Joubert, 246 Neb. 287, 518 N.W.2d 887 (1994)
- Adams v. State, 293 Neb. 612, 879 N.W.2d 18 (2016)
- Attorney General v. Waldron, 289 Md. 683, 426 A.2d 929 (1981)
- Fiedler v. Wisconsin Senate, 155 Wis. 2d 94, 454 N.W.2d 770 (1990)
- Stew. v. Bennett, 273 Neb. 17, 727 N.W.2d 424 (2007)
- Mistretta v. United States, 488 U.S. 361 (1989)
- Wellness International Network, Ltd. v. Sharif, 135 S. Ct. 1932, 191 L. Ed. 2d 911 (2015)
- Cactus Wren v. Department of Building & Fire Safety, 177 Ariz. 559, 869 P.2d 1212 (Ariz. App. 1993)

- Brierton v. Department of Motor Vehicles, 140 Cal. App. 4th 427, 44 Cal. Rptr. 3d 480 (2006)
- State v. Speedis, 350 Or. 424, 256 P.3d 1061 (2011)
- State ex rel. Metropolitan Public Defender v. Courtney, 335 Or. 236, 64 P.3d 1138 (2003)
- Brady v. Dean, 173 Vt. 542, 790 A.2d 428 (2001)
- Nixon v. Administrator of General Services, 433 U.S. 425 (1977)
- U'Ren v. Bagley, 118 Or. 77, 245 P. 1074 (1926)
- State v. M.D.T., 831 N.W.2d 276 (Minn. 2013)
- Slack Nursing Home, Inc. v. Department of Social Services, 247 Neb. 452, 528 N.W.2d 285 (1995)
- State v. Stratton, 220 Neb. 854, 374 N.W.2d 31 (1985)
- State v. Ellsworth, 61 Neb. 444, 85 N.W. 439 (1901)
- State, ex rel. Griggs, v. Meeker, 19 Neb. 106, 26 N.W. 620 (1886)
- In re Enforcement of Subpoena, 463 Mass. 162, 972 N.E.2d 1022 (2012)
- United States v. Morgan, 313 U.S. 409, 422 (1941)
- United States v. Nixon, 418 U.S. 683, 705, 706-707, 710 (1974)
- State v. Cribbs, 237 Neb. 947, 469 N.W.2d 108 (1991)
- State v. Ross, 186 Neb. 280, 183 N.W.2d 229 (1971)
- Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007)
- State, ex rel. Ralston, v. Turner, 141 Neb. 556, 4 N.W.2d 302 (1942)
- In re Interest of Constance G., 254 Neb. 96, 575 N.W.2d 133 (1998)
- State v. Burling, 224 Neb. 725, 400 N.W.2d 872 (1987)
- State v. Bjornsen, 201 Neb. 709, 271 N.W.2d 839 (1978)
- State v. Baue, 258 Neb. 968, 607 N.W.2d 191 (2000)