

SUPREME COURT OF NORTH DAKOTA

Laufer v. Doe

2020 ND 159 · No. 20200001 · Decided July 22, 2020

SUMMARY

The North Dakota Supreme Court affirmed dismissal of Dustin Laufer’s property-damage action arising from alleged herbicide drift. The Court held that N.D.C.C. § 4.1-33-18 requires strict compliance with certified-mail notice requirements before filing a civil action seeking reimbursement for pesticide-related property damage, and that actual notice by telephone was insufficient. The Court also upheld the award of litigation costs and disbursements.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers; Lisa Fair McEvers; Gerald W. VandeWalle; Jerod E. Tufte; Jon J. Jensen, Chief Justice
JURISDICTION	North Dakota
DECIDED	July 22, 2020
DOCKET	20200001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Laufer appealed from a district court judgment dismissing his property-damage complaint for failure to comply with statutory pesticide-damage notice requirements and awarding Doe costs and disbursements.
STANDARD OF REVIEW	A motion-to-dismiss ruling and statutory interpretation are reviewed de novo. Whether a party is a prevailing party for statutory disbursements is reviewed de novo; the amount of costs and disbursements is reviewed for abuse of discretion, and discretionary cost awards are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Dustin Laufer v. Warren G. Doe

TOPICS

- motions to dismiss
- statutory interpretation
- civil procedure
- appellate procedure
- costs

PRACTICE AREAS

torts

civil procedure

appellate procedure

statutory interpretation

remedies

QUESTIONS PRESENTED

1. Whether Laufer's appeal was timely under N.D.R.App.P. 4(a).
2. Whether sanctions were appropriate for Laufer's alleged violations of the Rules of Appellate Procedure.
3. Whether N.D.C.C. § 4.1-33-18 applies to an individual's civil action for property damage caused by pesticide application, including negligence claims not brought under N.D.C.C. chapter 4.1-33.
4. Whether a telephone call or the defendant's actual notice satisfies the statute's certified-mail notice requirement.
5. Whether the district court properly awarded Doe costs and disbursements.

HOLDINGS

1. The appeal was timely because the notice of appeal was filed within 60 days after service of notice of entry of judgment.
2. Sanctions under N.D.R.App.P. 13 were not warranted under the facts and circumstances of the case.
3. N.D.C.C. § 4.1-33-18 applies to any civil action seeking reimbursement for property damage allegedly stemming from a pesticide application, including an individual negligence action not brought to enforce N.D.C.C. chapter 4.1-33.
4. Strict compliance with N.D.C.C. § 4.1-33-18(1) is required; a telephone call or the pesticide applicator's actual notice does not substitute for notice by certified mail.
5. The district court did not abuse its discretion by awarding Doe \$647.07 in costs and disbursements.

KEY QUOTATIONS

“The plain language of the statute states a person must provide notice to the pesticide applicator by certified mail before the person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of pesticide.” (¶ 13)

“The failure to provide notice as required by the statute bars a lawsuit for damages.” (¶ 18)

“Even if Laufer’s telephone call provided Doe actual information about damages stemming from the chemical application, the call was not sufficient to comply with the notice requirements under N.D.C.C. § 4.1-33-18(1).” (¶ 20)

FACTUAL BACKGROUND

Laufer alleged that Doe sprayed a neighboring field with herbicide in 2018 and that chemical drift damaged Laufer's crops. Laufer communicated with Doe by telephone and relied on Doe's deposition admission that he had received information about the damage, but Laufer did not provide the statutory notice by certified mail. The district court dismissed the complaint and awarded Doe \$647.07 in costs and disbursements.

PROCEDURAL HISTORY

Laufer sued Doe in November 2018, alleging herbicide drift damaged his crops. The district court granted Doe's motion to dismiss under N.D.C.C. § 4.1-33-18 because Laufer had not provided the required certified-mail notice, and it later entered judgment awarding Doe \$647.07 in costs and disbursements. The Supreme Court of North Dakota held the appeal timely, denied Doe's sanctions request, and affirmed.

DISPOSITION

affirmed

CASES CITED

- Krump-Wootton v. Krump, 2019 ND 275, ¶ 7, 935 N.W.2d 534
- Silbernagel v. Silbernagel, 2007 ND 124, ¶ 21, 736 N.W.2d 441
- Hondl v. State, 2020 ND 20, ¶ 5, 937 N.W.2d 564
- Hughes v. Olheiser Masonry, Inc., 2019 ND 273, ¶ 5, 935 N.W.2d 530
- Wilkens v. Westby, 2019 ND 186, ¶ 6, 931 N.W.2d 229
- PHI Fin. Servs., Inc. v. Johnston Law Office, P.C., 2020 ND 22, ¶ 10, 937 N.W.2d 885
- State v. G.C.H., 2019 ND 256, ¶ 13, 934 N.W.2d 857
- Dickinson Air Serv., Inc. v. Kadrmas, 397 N.W.2d 55, 57-58 (N.D. 1986)
- Wills v. Schroeder Aviation, Inc., 390 N.W.2d 544, 545-47 (N.D. 1986)
- In re K.V., 2019 ND 255, ¶ 16, 934 N.W.2d 879
- Sweeney v. Sweeney, 2002 ND 206, ¶ 17, 654 N.W.2d 407
- State v. New Holland, 2015 ND 223, ¶¶ 14, 26, 869 N.W.2d 136
- Voigt v. State, 2008 ND 236, ¶¶ 4-5, 759 N.W.2d 530
- Ghorbanni v. N.D. Council on the Arts, 2002 ND 22, ¶ 8, 639 N.W.2d 507
- Allied Mut. Ins. Co. v. Dir. of N.D. Dep't of Transp., 1999 ND 2, ¶¶ 10, 15-16, 589 N.W.2d 201
- Carpenter v. Rohrer, 2006 ND 111, ¶ 34, 714 N.W.2d 804
- Riemers v. Anderson, 2004 ND 109, ¶ 14, 680 N.W.2d 280