

SUPREME COURT OF NEBRASKA

Nauenburg v. Lewis, 265 Neb. 89

655 N.W.2d 19 (2003) · No. Nos. S-01-576, S-01-577 · Decided January 10, 2003

SUMMARY

The Nebraska Supreme Court affirmed judgments for Sharon Lewis in consolidated false-imprisonment actions brought by Chris M. Nauenburg, Jeremy McCloud, and Logan McCloud. The court held that the jury instructions concerning warrantless arrests and informer liability correctly stated Nebraska law and were supported by the evidence. The court declined to consider an inadequately briefed evidentiary assignment and did not reach Lewis's cross-appeal.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	McCormack, J.; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 10, 2003
DOCKET	Nos. S-01-576, S-01-577
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants brought civil false-imprisonment actions against Lewis. After a consolidated jury trial resulted in verdicts for Lewis, appellants appealed jury-instruction and evidentiary issues, and Lewis cross-appealed rulings concerning summary judgment and privilege.
STANDARD OF REVIEW	The correctness of a jury instruction is a question of law reviewed independently. Instructions are read as a whole; there is no prejudicial error if they correctly state the law, are not misleading, and adequately cover issues supported by the pleadings and evidence. An appellant challenging jury instructions bears the burden of showing prejudice or impairment of a substantial right.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Chris M. Nauenburg, Jeremy McCloud, Logan McCloud v. Sharon Lewis

TOPICS

false imprisonment

jury instructions

probable cause

appellate procedure

standard of review

PRACTICE AREAS

torts

civil litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court erred by instructing the jury regarding when a peace officer may arrest a person without a warrant.
2. Whether the district court erred by refusing to allow appellants to ask a State Patrol trooper whether he agreed with the county attorney's decision to dismiss the traffic citations.
3. Whether Lewis was entitled to summary judgment on the false-imprisonment claims and whether the information she supplied was privileged, as raised in her cross-appeal.

HOLDINGS

1. The district court did not err in instructing the jury concerning when a peace officer may make a warrantless arrest. The instruction correctly stated Nebraska law, was supported by the evidence, and did not prejudice the appellants.
2. The court would not consider the claimed evidentiary error because appellants assigned it but failed to discuss it in their briefs.
3. The court did not address Lewis's cross-appeal because its resolution of the appellants' assignments of error made consideration unnecessary.

KEY QUOTATIONS

“[A] police officer on ‘off-duty’ status is nevertheless not relieved of the obligation as an officer to preserve the public peace and to protect the lives and property of the citizens of the public in general.” (24)

“We have recognized that probable cause is to be evaluated by the collective information of the police engaged in a common investigation.” (24)

FACTUAL BACKGROUND

Lewis, an off-duty Kimball police officer, observed Chris Nauenburg driving away from an apartment complex under police surveillance and later observed the vehicle speeding, weaving, swerving across the centerline, and moving onto the shoulder. She reported those observations and information about the apartment complex to a Nebraska State Patrol dispatcher, and later reported that a second vehicle driven by Logan McCloud was following closely. State Patrol troopers stopped both vehicles, handcuffed Nauenburg, Jeremy McCloud, and Logan McCloud, and detained them for approximately two hours, but found no weapons or drugs and determined that none was intoxicated. Traffic citations issued to Nauenburg and Logan were later dismissed.

PROCEDURAL HISTORY

The district court granted Lewis summary judgment on the appellants' outrageous-conduct claims but denied summary judgment on the false-imprisonment claims. Following a consolidated jury trial, the jury returned verdicts for Lewis, and the district court denied appellants' motions for new trial. The Nebraska Supreme Court affirmed and did not reach Lewis's cross-appeal because of its resolution of the appellants' assignments.

DISPOSITION

affirmed

CASES CITED

- Malone v. American Bus. Info., 264 Neb. 127, 647 N.W.2d 569 (2002)
- In re Application No. C-1889, 264 Neb. 167, 647 N.W.2d 45 (2002)
- Nebraska Nutrients v. Shepherd, 261 Neb. 723, 626 N.W.2d 472 (2001)
- Smith v. Fire Ins. Exch. of Los Angeles, 261 Neb. 857, 626 N.W.2d 534 (2001)
- Johnson v. First Nat. Bank & Trust Co., 207 Neb. 521, 300 N.W.2d 10 (1980)
- State v. Wilen, 4 Neb. App. 132, 141-42, 539 N.W.2d 650, 658 (1995)
- State v. Soukharith, 253 Neb. 310, 570 N.W.2d 344 (1997)
- Henriksen v. Gleason, 263 Neb. 840, 643 N.W.2d 652 (2002)

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