

NEBRASKA COURT OF APPEALS

Collection Bureau of Grand Island, Inc. v. Fry, 9 Neb. App. 277

610 N.W.2d 442 (2000) · No. A-99-573 · Decided May 16, 2000

SUMMARY

The Nebraska Court of Appeals held that a county court case seeking money for heating-system repairs was not an equity action and could not be transferred to district court under Neb. Rev. Stat. § 25-2706 merely by a party's filing. Because no proper county court certification or transfer occurred, the district court lacked jurisdiction, making its judgment void and depriving the appellate court of jurisdiction. The appeal was dismissed, and the cause was remanded with directions to vacate the district court judgment and return the case to county court.

CASE DETAILS

COURT	Nebraska Court of Appeals
WRITING FOR THE COURT	Hannon; Inbody; Carlson
JURISDICTION	Nebraska
DECIDED	May 16, 2000
DOCKET	A-99-573
DISPOSITION	dismissed
PROCEDURAL POSTURE	Collection Bureau sued Fry and his landlord in county court to recover the cost of heating-system repair and service. Collection Bureau filed a purported motion to certify the case to district court on the theory that the unjust-enrichment claim was equitable. The district court proceeded without a transfer order, dismissed the landlord, and entered a \$403 judgment plus costs and attorney fees against Fry. Fry appealed.
STANDARD OF REVIEW	Jurisdiction is a question of law reviewed independently. Any factual findings concerning jurisdiction are upheld unless clearly erroneous.
PRECEDENTIAL VALUE	Published Nebraska Court of Appeals opinion
PARTIES	Casey Fry v. Collection Bureau of Grand Island, Inc., doing business as Credit Management

TOPICS

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QUESTIONS PRESENTED

1. Whether the county court case was properly transferred to the district court under Neb. Rev. Stat. § 25-2706.
2. Whether the district court acquired jurisdiction when no county-court order or certification transferred the case.
3. Whether an action seeking money under theories such as unjust enrichment or quantum meruit is an equity action exclusively within the district court's jurisdiction.
4. Whether the Court of Appeals had jurisdiction to decide Fry's remaining assignments of error.

HOLDINGS

1. Neb. Rev. Stat. § 25-2706 authorizes the county court, not a litigant, to certify proceedings to the district court. A case is not properly transferred absent a county-court order or other official action evidencing the transfer or dismissal.
2. An action seeking only a money judgment for services is an action at law, even when pleaded or characterized as unjust enrichment or quantum meruit; the use of equitable terminology does not place the action exclusively within the district court's equity jurisdiction.
3. Because the district court lacked jurisdiction, the Court of Appeals also lacked jurisdiction over the appeal and was required to dismiss it, while retaining authority to direct the jurisdictionless district court to vacate its void judgment.

KEY QUOTATIONS

“It is clear that a county court cannot remove the case off of its docket under § 25-2706 without an order evidencing transfer to the district court, or otherwise dismissing the case.” (at 446)

“We therefore conclude that the instant case was not certifiable to the district court, that the district court did not acquire jurisdiction of the case, and that all orders issued by it in the case appealed from are void.” (at 448)

“We therefore dismiss this appeal for lack of jurisdiction and remand the cause to the district court with directions to vacate its judgment and return the case to the county court for further proceedings.” (at 448)

FACTUAL BACKGROUND

Collection Bureau, as assignee of a claim by BTR Commercial Refrigeration, sought payment for heating-system repairs and services supplied to a house rented by Fry from Batterton. The petition sought a money

judgment against both Fry and Batterton and alleged, among other things, that Fry lived in the house and was in the process of purchasing it. The amount ultimately awarded against Fry was \$403 plus costs and attorney fees.

PROCEDURAL HISTORY

The action began in the York County Court. After pleadings were completed, Collection Bureau filed a document in the district court purporting to transfer or certify the proceedings under Neb. Rev. Stat. § 25-2706, but the record showed no county-court order or certification. The district court dismissed Batterton and entered judgment against Fry after a bench trial. The Court of Appeals held that the district court never acquired jurisdiction, dismissed the appeal, and remanded with directions to vacate the district court's judgment and return the case to county court.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The district court must vacate its judgment and return the case to the county court for further proceedings. The parties' motions for attorney fees were denied.

CASES CITED

- Walksalong v. Mackey, 250 Neb. 202, 549 N.W.2d 384 (1996)
- Anderson/Couvillon v. Nebraska Dept. of Soc. Servs., 248 Neb. 651, 538 N.W.2d 732 (1995)
- J.L. Healy Constr. Co. v. State, 236 Neb. 759, 463 N.W.2d 813 (1990)
- Iodence v. Potmesil, 239 Neb. 387, 476 N.W.2d 554 (1991)
- Richdale Dev. Co. v. McNeil Co., 244 Neb. 694, 508 N.W.2d 853 (1993)
- Kroll v. Department of Motor Vehicles, 256 Neb. 548, 590 N.W.2d 861 (1999)
- White v. Medico Life Ins. Co., 212 Neb. 901, 327 N.W.2d 606 (1982)
- Central Sur. & Ins. Corp. v. Atlantic Nat. Ins. Co., 178 Neb. 226, 132 N.W.2d 758 (1965)
- Tobin v. Flynn & Larsen Implement Co., 220 Neb. 259, 369 N.W.2d 96 (1985)
- Bachman v. Easy Parking of America, 252 Neb. 325, 562 N.W.2d 369 (1997)
- Nebraska Pub. Emp. v. City of Omaha, 247 Neb. 468, 528 N.W.2d 297 (1995)
- Tracy v. Tracy, 7 Neb. App. 143, 581 N.W.2d 96 (1998)
- Professional Recruiters v. Oliver, 235 Neb. 508, 456 N.W.2d 103 (1990)

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