

NEBRASKA SUPREME COURT

Castonguay v. Retelsdorf

291 Neb. 220 (2015) · No. No. S-14-292 · Decided June 26, 2015

SUMMARY

The Nebraska Supreme Court held that a district court may not deny in forma pauperis status based solely on a sua sponte objection to venue. The court reversed and remanded, explaining that the statutory exceptions are limited to sufficient funds or frivolous or malicious legal positions, and that improper venue does not establish frivolousness or deprive the court of subject matter jurisdiction.

CASE DETAILS

|                       |                                                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Nebraska Supreme Court                                                                                                                           |
| WRITING FOR THE COURT | McCormack, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; Miller-Lerman, J.                                                          |
| JURISDICTION          | Nebraska                                                                                                                                         |
| DECIDED               | June 26, 2015                                                                                                                                    |
| DOCKET                | No. S-14-292                                                                                                                                     |
| DISPOSITION           | reversed_and_remanded                                                                                                                            |
| PROCEDURAL POSTURE    | Castonguay appealed the Lancaster County District Court's denial of his motion to proceed in forma pauperis in a pro se civil rights action.     |
| STANDARD OF REVIEW    | Denial of in forma pauperis status is reviewed de novo on the record, based on the hearing transcript or the district court's written statement. |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential.                                                                                          |
| PARTIES               | Paul Castonguay v. Leigh Ann Retelsdorf, et al.                                                                                                  |

TOPICS

- venue
- civil procedure
- appellate procedure
- subject matter jurisdiction
- statutory interpretation

PRACTICE AREAS

- civil procedure
- appellate procedure
- civil rights

QUESTIONS PRESENTED

1. Whether a district court may deny an application to proceed in forma pauperis based solely on a sua sponte objection that the action was filed in an improper venue.
2. Whether filing in an improper venue makes the plaintiff's asserted legal position frivolous or malicious under Neb. Rev. Stat. § 25-2301.02.
3. Whether venue is jurisdictional or otherwise permits the court to deny in forma pauperis status before addressing the merits.

## HOLDINGS

1. A court may not deny an application to proceed in forma pauperis based on a sua sponte objection to improper venue when the statutory grounds for denial are limited to the applicant's sufficient funds or assertion of frivolous or malicious legal positions.
2. Filing an action in an improper venue does not, by itself, make the legal position asserted by the plaintiff frivolous or malicious for purposes of Neb. Rev. Stat. § 25-2301.02.
3. The Lancaster County District Court had subject matter jurisdiction and the power and duty to decide Castonguay's motion unless and until the action was transferred to another venue.

## KEY QUOTATIONS

*"The courts are not at liberty to engraft on § 25-2301.02 any additional requirements for proceeding in forma pauperis."* (291 Neb. at 222)

*"A frivolous legal position pursuant to § 25-2301.02 is one wholly without merit, that is, without rational argument based on the law or on the evidence."* (291 Neb. at 223)

*"The statute governing in forma pauperis status does not allow the court to deny the plaintiff's application on the grounds of improper venue."* (291 Neb. at 225)

## FACTUAL BACKGROUND

Paul Castonguay, incarcerated after a Douglas County conviction for first degree sexual assault, filed a pro se § 1983 complaint in Lancaster County against prosecutors, public defenders, and two attorneys. He alleged that the defendants withheld exculpatory DNA evidence and that an assistant attorney general misrepresented the existence of that evidence. Castonguay sought money damages and requested leave to proceed in forma pauperis; the district court denied that request solely because the complaint did not show that Lancaster County was the proper venue.

## PROCEDURAL HISTORY

Castonguay filed a pro se complaint under 42 U.S.C. § 1983 in Lancaster County and moved to proceed in forma pauperis, supported by an affidavit of poverty and correctional-account certification. The district court sua sponte objected to venue and denied in forma pauperis status on the ground that the complaint did not allege facts establishing proper venue. The Nebraska Supreme Court reversed and remanded with directions.

## DISPOSITION

## REMAND INSTRUCTIONS

The cause was remanded with directions to proceed in a manner consistent with the opinion, including deciding the application to proceed in forma pauperis without relying on improper venue as a ground for denial.

## CASES CITED

- Tyler v. Nebraska Dept. of Corr. Servs., 13 Neb. Ct. App. 795, 701 N.W.2d 847 (2005)
- Conroy v. Keith Cty. Bd. of Equal., 288 Neb. 196, 846 N.W.2d 634 (2014)
- Chapin v. Neuhoff Broad.-Grand Island, Inc., 268 Neb. 520, 684 N.W.2d 588 (2004)
- Estate of McElwee v. Omaha Transit Auth., 266 Neb. 317, 664 N.W.2d 461 (2003)
- Tyler v. Natvig, 17 Neb. Ct. App. 358, 762 N.W.2d 621 (2009)
- Cole v. Blum, 262 Neb. 1058, 637 N.W.2d 606 (2002)
- Blitzkie v. State, 228 Neb. 409, 422 N.W.2d 773 (1988)
- Trujillo v. Williams, 465 F.3d 1210 (10th Cir. 2006)
- Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987)
- Sanders v. United States, 760 F.2d 869 (8th Cir. 1985)
- Sinwell v. Shapp, 536 F.2d 15 (3d Cir. 1976)
- Fiorani v. Chrysler Group, 510 Fed. Appx. 109 (3d Cir. 2013)
- Crawford v. Frimel, 197 Fed. Appx. 144 (3d Cir. 2006)