

NORTH DAKOTA SUPREME COURT

Pizza Corner, Inc. v. C.F.I. Transport, Inc.

792 N.W.2d 911 (N.D. 2010) · Decided December 21, 2010

SUMMARY

The North Dakota Supreme Court affirmed a judgment awarding Pizza Corner, Inc. damages for frozen pizzas allegedly damaged during transportation. The court held that a handwritten temperature notation on a bill of lading was admissible under the business-records exception because Pizza Corner adopted and relied on the document in its ordinary business operations.

CASE DETAILS

COURT	North Dakota Supreme Court
WRITING FOR THE COURT	Crothers, Justice; Crothers; Maring; Kapsner; Sandstrom
JURISDICTION	North Dakota
DECIDED	December 21, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	C.F.I. Transport, Inc. appealed from a district court judgment entered after a bench trial that awarded Pizza Corner, Inc. damages, interest, costs, and disbursements.
STANDARD OF REVIEW	The admission of evidence is reviewed for abuse of discretion. A district court abuses its discretion when it acts arbitrarily, unconscionably, or unreasonably, or when its decision is not the product of a rational mental process.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	C.F.I. Transport, Inc. v. Pizza Corner, Inc.

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the handwritten temperature notation on the bill of lading was hearsay.
2. Whether the handwritten temperature notation was admissible under N.D.R.Ev. 803(6) as a record of regularly conducted business activity.
3. Whether the district court abused its discretion by admitting the bill of lading and handwritten notation.

HOLDINGS

1. The handwritten temperature notation was a written assertion offered to prove the truth of the matter asserted and therefore constituted hearsay.
2. A record created by a third party may be admitted as the business record of another entity when that entity integrated the record into its own records, relied on its accuracy, and the other requirements of N.D.R.Ev. 803(6) are satisfied.
3. The district court did not abuse its discretion by admitting the bill of lading and handwritten temperature notation under N.D.R.Ev. 803(6).

KEY QUOTATIONS

“We adopt the position of these courts.” (¶ 16)

“We therefore conclude the district court did not abuse its discretion by admitting the handwritten notation on the bill of lading under Rule 803(6) as a record of regularly conducted business activity.” (¶ 17)

FACTUAL BACKGROUND

A.A. Pizza Corner ordered frozen pizzas and other goods, and C.F.I. Transport transported them from North Dakota to Washington for shipment to Alaska. The truck's refrigeration unit was set at 4 degrees Fahrenheit when the goods were loaded, but the bill of lading later contained a handwritten notation stating "Temp+41.0" when the shipment was unloaded in Tacoma. The pizzas arrived in Alaska damaged and were rejected, and Pizza Corner sued C.F.I. for the loss.

PROCEDURAL HISTORY

Pizza Corner filed a complaint alleging that frozen pizzas transported by C.F.I. arrived damaged after being exposed to a temperature of 41 degrees Fahrenheit. Following a bench trial, the district court admitted the bill of lading and its handwritten temperature notation under the business-records exception and awarded Pizza Corner \$12,903.17 in damages, plus interest and costs. C.F.I. appealed, arguing the handwritten notation was inadmissible hearsay.

DISPOSITION

affirmed

CASES CITED

- State v. Grant, 2009 ND 210, ¶ 10, 776 N.W.2d 209

- Davis v. Kiliu, 2006 ND 32, ¶ 6, 710 N.W.2d 118
- State v. Gibbs, 2009 ND 44, ¶ 32, 763 N.W.2d 430
- Farmers Union Oil Co. of Dickinson v. Wood, 301 N.W.2d 129, 135-136 (N.D. 1980)
- Brawner v. Allstate Indem. Co., 591 F.3d 984, 987 (8th Cir. 2010)
- Dyno Const. Co. v. McWane, Inc., 198 F.3d 567, 575-576 (6th Cir. 1999)
- United States v. Lauersen, 348 F.3d 329, 342 (2d Cir. 2003)
- United States v. Jenkins, 345 F.3d 928, 936 (6th Cir. 2003)
- United States Commodity Futures Trading Commission v. Dizona, 594 F.3d 408, 416 (5th Cir. 2010)
- United States v. Adefehinti, 510 F.3d 319, 326 (D.C. Cir. 2007)
- Air Land Forwarders, Inc. v. United States, 172 F.3d 1338, 1342 (Fed. Cir. 1999)
- United States v. Childs, 5 F.3d 1328, 1333 (9th Cir. 1993)
- United States v. Carranco, 551 F.2d 1197, 1200 (10th Cir. 1977)
- Morrison Grain Co. v. Utica Mutual Insurance Co., 632 F.2d 424, 432 (5th Cir. 1980)

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