

SUPREME COURT OF NORTH DAKOTA

Twete v. Mullin

2020 ND 264 (2020) · No. 20200106 · Decided December 17, 2020

SUMMARY

The North Dakota Supreme Court reversed a district court judgment awarding attorney’s fees to Richard Twete in litigation involving a breach of trust and constructive trust. The court held that neither contractual nor statutory authority supported the award, and that the common-fund exception to the American Rule did not apply because Twete was the trust’s sole beneficiary.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Jerod E. Tufte; Jon J. Jensen, C.J.; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers
JURISDICTION	North Dakota
DECIDED	December 17, 2020
DOCKET	20200106
DISPOSITION	reversed
PROCEDURAL POSTURE	Mullin appealed from a district court judgment awarding Twete attorney's fees after remand from an earlier appeal.
STANDARD OF REVIEW	A district court's attorney's-fees decision is reviewed for abuse of discretion. Questions of law concerning misapplication or misinterpretation of the law are reviewed de novo.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Clinton R. Mullin v. Richard S. Twete

TOPICS

- trustee duties
- breach of trust
- remedies
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- trusts
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the North Dakota Uniform Trust Code provides statutory authority for an award of attorney's fees in a breach-of-trust action.
2. Whether the omission of Uniform Trust Code section 1004 from North Dakota's adoption of the Code displaced the common-law authority to award attorney's fees in breach-of-trust cases.
3. Whether the common-fund exception to the American Rule authorizes attorney's fees when the action is brought by and benefits only the trust's sole beneficiary.
4. Whether the district court abused its discretion by awarding Twete attorney's fees.

HOLDINGS

1. North Dakota's statutory remedies for breach of trust do not include an award of attorney's fees, and the constructive trust imposed as a remedy supplies no contractual authority for such an award.
2. North Dakota's adoption of the Uniform Trust Code without section 1004 did not foreclose all common-law attorney's-fees awards in breach-of-trust cases; instead, the common law of trusts and principles of equity continue to supplement the statutory trust chapters except where modified by statute.
3. The common-fund exception to the American Rule does not authorize an attorney's-fees award in a breach-of-trust action brought by and benefiting only the trust's sole beneficiary.
4. The district court abused its discretion by misinterpreting the law and awarding Twete attorney's fees without applicable statutory, contractual, or common-fund authority.

KEY QUOTATIONS

“The American Rule, long recognized by this Court, states that absent statutory or contractual authority, parties to a lawsuit bear their own attorney’s fees.” (¶ 4)

“The common law common fund doctrine does not provide the district court authority to award attorney’s fees to a class of one person.” (¶ 8)

FACTUAL BACKGROUND

A jury found that Mullin and Twete had a confidential relationship, that Mullin breached a trust, and that the breach caused damages. The district court imposed a constructive trust as equitable relief and awarded Twete attorney's fees. Twete was the sole beneficiary of the trust, and his action benefited the trust but did not benefit any other beneficiary or member of a class.

PROCEDURAL HISTORY

In the first appeal, the Supreme Court affirmed the jury's findings of a confidential relationship and breach of trust but reversed an attorney's-fees award and remanded for further consideration and explanation of the legal basis for the award. On remand, the district court again awarded Twete attorney's fees. Mullin appealed, and the Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Twete v. Mullin, 2019 ND 184, 931 N.W.2d 198
- State v. Kostelecky, 2018 ND 12, ¶ 6, 906 N.W.2d 77
- Hall v. Cole, 412 U.S. 1, 5 (1973)
- In re Estate of Hass, 2002 ND 82, ¶ 22, 643 N.W.2d 713
- In re Estate of Rohrich, 496 N.W.2d 566 (N.D. 1993)
- Matter of Sturdevant, 340 N.W.2d 888 (N.D. 1983)
- Allard v. Johnson, 2006 ND 243, ¶ 3, 724 N.W.2d 331
- Mills v. Electric Auto-Lite Co., 396 U.S. 375, 392 (1970)