

SUPREME COURT OF NEBRASKA

Federal National Mortgage Association v. Marcuzzo

289 Neb. 301 (2014) · No. No. S-13-929 · Decided October 17, 2014

SUMMARY

The Nebraska Supreme Court affirmed a district court judgment upholding a county court’s exercise of jurisdiction in a forcible entry and detainer action. The court held that a mere allegation of a title dispute did not divest the county court of jurisdiction, and that the title dispute had been resolved by the time evidence concerning it was presented. The court found no plain error in the county court’s continuation of the case or issuance of a writ of restitution.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 17, 2014
DOCKET	No. S-13-929
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a forcible entry and detainer judgment in favor of Federal National Mortgage Association. The district court affirmed the Sarpy County Court and reviewed the appeal for plain error because the Marcuzzos failed to file a timely statement of errors. The Nebraska Supreme Court moved the appeal to its docket and reviewed the jurisdictional assignments for plain error.
STANDARD OF REVIEW	Because the Marcuzzos did not file a timely statement of errors, review was limited to plain error. Subject matter jurisdiction is a question of law reviewed independently of the trial court. Plain error is error plainly evident from the record that, if uncorrected, would damage the integrity, reputation, or fairness of the judicial process.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Brian S. Marcuzzo, Donna M. Marcuzzo v. Federal National Mortgage Association

TOPICS

subject matter jurisdiction

eviction

title disputes

appellate procedure

civil procedure

PRACTICE AREAS

Civil procedure

Real estate

Landlord-tenant and possession

Appellate procedure

Remedies

QUESTIONS PRESENTED

1. Whether the county court lacked jurisdiction to continue the forcible entry and detainer action after the Marcuzzos alleged that a separate action challenged title to the property.
2. Whether the county court lacked jurisdiction to enter a final restitution order after evidence of the title litigation was presented.
3. Whether the district court committed plain error in affirming the county court's judgment.

HOLDINGS

1. A mere averment that title is disputed in another action does not automatically divest the court hearing a forcible entry and detainer action of jurisdiction. The court may proceed until competent evidence demonstrates that resolution of the possession action requires determination of title.
2. The county court retained jurisdiction to enter the writ of restitution because, when evidence concerning the title dispute was presented, the dispute had already been resolved and no present title question remained for determination.
3. When no timely statement of errors is filed in an appeal from county court to district court, appellate review is limited to plain error; jurisdictional issues nevertheless must be considered because an appellate court must independently determine its jurisdiction.

KEY QUOTATIONS

“If the resolution of a forcible entry and detainer action requires a court to determine a title dispute, the court must dismiss the case for lack of jurisdiction.” (307)

“When a forcible entry and detainer action is ongoing, the mere averment that title is in dispute in another action involving the same property does not automatically divest the court hearing the forcible entry and detainer action of jurisdiction.” (307)

“But we long ago said that a court must find from the competent evidence whether title to real estate is drawn in question, and not from the pleadings or from the claims or pretensions of the parties.” (308)

“Because upon trial, the evidence did not show that the action concerned a present question of title, the county court had jurisdiction to issue the writ of restitution.” (312)

FACTUAL BACKGROUND

Brian and Donna Marcuzzo purchased Sarpy County property financed by a promissory note secured by a deed of trust. After they stopped making payments, they received notices of default and sale, and the property was

conveyed to FNMA by trustee's deed. FNMA filed a forcible entry and detainer action. The Marcuzzos separately filed a district court action challenging title, but when evidence of that action was finally presented in the county court, the title dispute had already been resolved as to FNMA.

PROCEDURAL HISTORY

FNMA brought a forcible entry and detainer action in Sarpy County Court after receiving a trustee's deed to the property. The Marcuzzos alleged that a separate district court action placed title in dispute, but no evidence of that dispute was presented when the county court initially considered the matter or FNMA's motion to continue. The county court continued the case, later received evidence showing that the district court title litigation had been resolved as to FNMA, and issued a writ of restitution. The district court affirmed, and the Nebraska Supreme Court affirmed both lower-court judgments.

DISPOSITION

affirmed

CASES CITED

- Cummins Mgmt. v. Gilroy, 266 Neb. 635, 667 N.W.2d 538 (2003)
- State v. Matit, 288 Neb. 163, 846 N.W.2d 232 (2014)
- State v. Zimmerman, 19 Neb. App. 451, 810 N.W.2d 167 (2012)
- Miller v. Brunswick, 253 Neb. 141, 571 N.W.2d 245 (1997)
- Carney v. Miller, 287 Neb. 400, 842 N.W.2d 782 (2014)
- Big John's Billiards v. State, 283 Neb. 496, 811 N.W.2d 205 (2012)
- In re Estate of McKillip, 284 Neb. 367, 820 N.W.2d 868 (2012)
- Connelly v. City of Omaha, 284 Neb. 131, 816 N.W.2d 742 (2012)
- Kipf v. Bitner, 150 Neb. 155, 33 N.W.2d 518 (1948)
- Stone v. Blanchard, 87 Neb. 1, 126 N.W. 766 (1910)
- Green v. Morse, 57 Neb. 391, 77 N.W. 925 (1899)
- Intercall, Inc. v. Egenera, Inc., 284 Neb. 801, 824 N.W.2d 12 (2012)
- Pettit v. Black, 13 Neb. 142, 12 N.W. 841 (1882)
- Jones v. Schmidt, 163 Neb. 508, 80 N.W.2d 289 (1957)
- Lipp v. Hunt, 25 Neb. 91, 41 N.W. 143 (1888)
- Blaco v. Haller, 9 Neb. 149, 1 N.W. 978 (1879)
- Sporer v. Herlik, 158 Neb. 644, 64 N.W.2d 342 (1954)