

SUPREME COURT OF NORTH DAKOTA

Gray v. Berg

Gray, 2015 ND 203 (N.D. 2015) · No. 20150040 · Decided August 24, 2015

SUMMARY

The North Dakota Supreme Court reversed a judgment dismissing David Gray's claims against Terry Berg concerning alleged unlawful hunting and trespass. The court held that the district court improperly denied Gray's demand for a change of judge based solely on the demand's timeliness because allegations of judicial bias are not subject to the same deadline as peremptory demands. The case was remanded for review of the bias-based demand and further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers; Carol Ronning Kapsner; Lisa Fair McEvers; Daniel D. Narum, District Judge
JURISDICTION	North Dakota
DECIDED	August 24, 2015
DOCKET	20150040
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Gray appealed from a final judgment dismissing his claims with prejudice after the district court granted Berg's motion for a directed verdict and denied Gray's demand for a change of judge as untimely.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	David B. Gray v. Terry Berg

TOPICS

- civil procedure
- appellate procedure
- preservation of error
- trespass

PRACTICE AREAS

- civil procedure
- appellate procedure
- torts

QUESTIONS PRESENTED

1. Whether the district court improperly denied Gray's pretrial demand for a change of judge based on alleged judicial bias by applying the ten-day timeliness requirement for a peremptory demand under N.D.C.C. § 29-15-21.

HOLDINGS

1. A demand for a change of judge based on allegations of bias is not subject to the same ten-day timeliness constraints that apply to a peremptory demand for a change of judge.

KEY QUOTATIONS

“Allegations of bias are not subject to the same time constraints.” (¶ 9)

“If Judge Hill finds merit to the demand for change of judge, a new trial before a different judge should be ordered.” (¶ 11)

FACTUAL BACKGROUND

Gray owned property adjacent to Berg's property. After Berg shot a deer on his own property and the deer traveled onto Gray's property, Berg and others entered or sought to enter Gray's property to locate the deer, despite Gray's refusal of permission and the posting of no-trespass and no-hunting signs. A game warden later entered the property with Berg, prompting Gray to contact law enforcement. Gray alleged that these entries violated North Dakota law and constituted trespass.

PROCEDURAL HISTORY

Gray sued Berg for alleged unlawful hunting, unlawful hunting near occupied buildings, and trespass, seeking damages, fees, injunctive relief, and invalidation of N.D.C.C. § 20.1-01-19. Before trial, Gray demanded a change of judge based on alleged bias and pretrial conduct; Judge James Hill denied the demand as untimely under N.D.C.C. § 29-15-21. After a bench trial, the district court granted Berg's directed-verdict motion, dismissed Gray's claims with prejudice, and awarded Berg attorney's fees. The North Dakota Supreme Court reversed and remanded based solely on the handling of Gray's bias-based demand for a change of judge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Judge Hill must review the demand for a change of judge based on the evidence introduced in support of it, notwithstanding N.D.C.C. § 29-15-21. If the demand has merit, a new trial before a different judge must be ordered. If it lacks merit, Judge Hill must order entry of a new judgment based on Judge Hagerty's prior order for judgment.

CASES CITED

- Evenstad v. Buchholz, 1997 ND 141, ¶ 11, 567 N.W.2d 194

- Van Sickle v. Hallmark & Assoc., Inc., 2008 ND 12, ¶ 28, 744 N.W.2d 532

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