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IN THE SUPREME COURT
STATE OF NORTH DAKOTA
DISTRICT COURT NO. 00-C-0605
SUPREME COURT NO. 20010150

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUL 30 2001

STATE OF NORTH DAKOTA

Dulcie N. Trottier,)
)
Plaintiff/Appellant,)
)
vs.)
)
Richard D. Bird,)
)
Defendant/Appellee.)

· APPEAL FROM THE DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
SIOUX COUNTY, NORTH DAKOTA
THE HONORABLE BRUCE B. HASKELL

BRIEF OF PLAINTIFF/APPELLANT

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ISSUE FOR REVIEW

1. Did The Trial Court Err In Dismissing This Case "With Prejudice" When The Court Concluded That It Lacked Subject Matter Jurisdiction?

I. BRIEF FACTUAL AND PROCEDURAL BACKGROUND

On March 26, 1996, on an exit road off North Dakota State Highway number 1806, defendant Bird negligently collided with the rear of a vehicle being by plaintiff Trottier. The accident occurred on that portion of Highway 1806 which runs through the Standing Rock Reservation. Plaintiff Trottier is a non-member of the Standing Rock Sioux Tribe. Defendant Bird is a member of the Standing Rock Sioux Tribe. Thereafter, plaintiff Trottier commenced this action. After completing certain discovery, defendant Bird brought a Motion for Summary Judgment alleging that the Court lacked subject matter jurisdiction over the case as a matter of law. After considering the matter, and defendant Bird's arguments, plaintiff Trottier agreed that the state court likely did not have subject matter jurisdiction over the case and requested that the Court dismiss the matter without prejudice so that plaintiff could pursue her claim in federal court. (Plaintiff's Response to Defendant's Motion for Summary Judgment - Docket No. 8).

Although the District Court, the Honorable Bruce B. Haskell concluded that "this Court lacks subject matter jurisdiction", the Court entered an Order for Judgment dismissing the action "with prejudice". (Order at App. 7 and Order for Judgment at App. 9).

Plaintiff Trottier thereafter brought a Motion to Amend the Judgment, again requesting that the case be dismissed "without prejudice" as opposed to "with prejudice" as the Judgment presently provides. Plaintiff Trottier pointed out that a Court which lacks

jurisdiction cannot render a decision on the merits and can only dismiss the case for lack of jurisdiction. Plaintiff Trottier was and is concerned that a dismissal with prejudice could potentially be construed as being res judicata.

Judge Haskell, without any discussion or analysis, denied plaintiff Trottier's Motion to Amend Judgment. (App. 10). This appeal followed.

II. A COURT WHICH LACKS JURISDICTION CANNOT DISMISS A CASE WITH PREJUDICE

In its Order dated February 12, 2001, the Court concluded that "this Court lacks subject matter jurisdiction". (Order p.2, App. 7).

The general rule is that proceedings conducted or decisions made by a Court which does not have jurisdiction over the subject matter are legally void. See 20 Am. Jur. 2d, Court's, §65 and cases cited therein, including Hermes v. Markham, 49 N.W.2d 238 (ND 1951).

A Court which lacks jurisdiction over a case (1) cannot make a decision in favor of either party (2) cannot dismiss the Complaint for failure to state a claim and (3) cannot render a summary judgment, because such a decision would be on the merits of the action. See 20 Am. Jur. 2d, Court's, §65 and cases cited therein.

A Court can only dismiss the case for want of jurisdiction. However, a judgment made by a Court without jurisdiction over the subject matter can be set aside and vacated at any time by the

Court that rendered it. See 20 Am. Jur. 2d, Court's, §65 and cases cited therein.

The North Dakota Supreme Court has well summarized the law in this area by quoting with approval the following:

"Jurisdiction precedes adjudication. Before a court may say anything worth listening to regarding the (de) merits of a party's claim, that court must have authority to speak. That court has such authority only when the claim is one within the court's subject matter jurisdiction and after the court has acquired personal jurisdiction of the parties. If the court is without jurisdiction --- subject matter or personal --- no one is bound by anything the court may say regarding the (de) merits of the case."

Smith vs. City of Grand Forks, 478 NW2d 370, 373 (ND 1991).

Finally, in Western Life Trust vs. State, 536 NW2d 709 (ND 1995) the North Dakota Supreme Court stated (albeit with respect to personal jurisdiction as opposed to subject matter jurisdiction):

"Without personal jurisdiction, the Court is powerless to do anything beyond dismissing without prejudice."
(536 NW2d at 712)

III. CONCLUSION

In as much as the District Court lacked jurisdiction over the subject matter of this action it is respectfully submitted that it could only dismiss the action without prejudice and could make no decision whatsoever affecting the merits of the case. Here, plaintiff Trottier is obviously concerned that a dismissal of the case "with prejudice" could potentially be considered res judicata when the matter is pursued in federal court.

For the reasons set forth above, plaintiff Trottier respectfully requests that this Court direct that the existing

Judgment be vacated and an Amended Judgment be entered to reflect that the action is dismissed without prejudice.

Dated this 30 day of July, 2001.


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AFFIDAVIT OF SERVICE BY MAIL

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STATE OF NORTH DAKOTA

Celeste A. Keller, being first duly sworn, deposes and says that she is a citizen of the United States, of legal age, and not a party to, nor interested in, the above-entitled matter.

That on the 30th day of July, 2001, she served the
1) BRIEF OF PLAINTIFF/APPELLANT; 2) APPENDIX OF
PLAINTIFF/APPELLANT; and 3) AFFIDAVIT OF SERVICE BY MAIL upon
the defendant in this action by placing true and correct
copies of said documents in an envelope addressed as follows:

Chris Edison
Storslee Law Firm, P.C.
1802 Allison Drive
P.O. Box 4007
Bismarck, ND 58502-4007

and depositing the same with sufficient postage prepaid, in
the United States mail at Bismarck, North Dakota.

Celeste A. Keller
Celeste A. Keller, Affiant

Subscribed and sworn to before me this 30 day of July,
2001.

Robert W. Johnson
Notary Public
My commission expires: 8-10-06