

STATE OF MICHIGAN
COURT OF APPEALS

NANCY CAZA,

Plaintiff-Appellee,

v

POINTE DODGE,

Defendant-Appellant.

UNPUBLISHED

January 15, 2002

No. 220605

Wayne Circuit Court

LC No. 98-813946

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the Wayne Circuit Court denying its application for leave to appeal from an order of the 36th District Court. The district court had rejected defendant's argument that it lacked authority to enter a judgment in excess of its upper jurisdictional limit. On appeal, defendant argues that the circuit court erroneously denied leave to appeal from the district court decision. We reverse the circuit court's decision and remand for further proceedings consistent with this opinion.

Plaintiff filed her personal injury complaint in Wayne Circuit Court on August 18, 1995. Plaintiff initially alleged that she had suffered injuries in excess of \$10,000.¹ On April 23, 1996, plaintiff's claim mediated for only \$8,500. As a result, by order dated June 4, 1996, the circuit court removed the case to the district court, pursuant to MCL 600.641. At that time, MCL 600.641 provided that the verdict rendered in the district court in such removal cases could exceed the district court's upper jurisdictional limit. The statute provided, in pertinent part:

(1) If it appears at the conclusion of a pretrial hearing on an action commenced in the circuit court that the amount of damages sustained may be less than the jurisdiction limitation as to the amount in controversy applicable to the district courts, the circuit judge may remove, without the consent of the parties, the action to a district court within the county which would have had jurisdiction but for the amount of damages demanded and in which venue would have been proper. If

¹ At that time, the district courts possessed exclusive jurisdiction in civil actions when the amount in controversy did not exceed \$10,000. MCL 600.8301. The Legislature subsequently raised the upper jurisdictional limit contained in MCL 600.8301 to \$25,000. See 1996 PA 338, effective January 1, 1998.

venue would have been proper in more than 1 district in the county, the action shall be assigned by lot by the clerk of the court to a district in which venue would have been proper within the county.

* * *

(5) If the action is removed, then the verdict or judgment shall be lawful to the extent of the amount demanded, notwithstanding the jurisdiction limitation as to the amount in controversy otherwise applicable to cases commenced in the district court. [MCL 600.641.]

Approximately six months after the circuit court removed plaintiff's case to the district court, the Legislature repealed MCL 600.641. See 1996 PA 374, § 5, effective January 1, 1997.² Subsequently, on November 3, 1997, defendant filed a motion in the district court, seeking a ruling that the district court was precluded from entering an award in excess of \$10,000. Defendant argued that the repeal of MCL 600.641 had rendered the statute a nullity, and that the district court was therefore deprived of its former authority to award damages in excess of its jurisdictional limit. Plaintiff countered that the repeal of MCL 600.641 should not be applied in a retroactive manner and should not impact her claim, which had been filed in the circuit court and remanded to the district court long before the Legislature repealed MCL 600.641. The district court ultimately denied defendant's motion, ruling that the repeal of MCL 600.641 lacked retroactive effect and concluding that it possessed authority to enter an award in excess of its jurisdictional limit, if such an award were supported by plaintiff's proofs.

Defendant then appealed the district court's decision to the circuit court. The circuit court denied leave to appeal, concluding that the repeal of MCL 600.641 should not be retroactively applied to limit the damages that plaintiff might recover in district court. We conclude that the circuit court erroneously focused on the issue of retroactivity, and hold that the circuit court erroneously denied leave to appeal from the district court's decision.

Defendant argued below, and continues to argue on appeal, that the repeal of a statute renders that statute a nullity. Defendant primarily relies on *McDowel v Fuller*, 183 Mich 639; 150 NW 353 (1915), to support its argument. In that case, our Supreme Court considered the effect of a statutory repeal which occurred after the plaintiff obtained a judgment in the circuit court, but before the case was resolved on appeal. *Id.* at 641. The Court concluded as follows:

The effect of the repeal of a statute is to obliterate the statute repealed as completely as if it had never been passed, and it must be considered as a law that never existed, except for the purposes of those actions or suits which were commenced, prosecuted, and *concluded* while it was an existing law. [*Id.* at 644 (emphasis added).]

Defendant argues that the repeal of MCL 600.641 completely divested the district court, when deciding cases removed there by the circuit court, of its statutory authority to enter

² Likewise, effective July 1, 1997, our Supreme Court repealed MCR 4.003, the court rule that implemented the statutory removal procedure.

judgments in excess of the district court's upper jurisdictional limit. Because plaintiff's suit had not concluded before the Legislature repealed the statute, defendant argues that the repeal obliterated plaintiff's statutory right to obtain a district court award in excess of the district court's jurisdictional limit. We conclude that defendant's argument accords only partial effect to the *McDowel* Court's holding. In 1996 PA 374, the Legislature did not simply repeal MCL 600.641(5), which permitted the district court to enter a judgment in excess of its jurisdictional limit. Rather, the Legislature repealed the entirety of MCL 600.641, which created the procedure by which a circuit court was permitted to remove cases to a district court, when it appeared that the amount of the plaintiff's damages might be less than the district court's upper jurisdictional threshold. We therefore conclude that the repeal of MCL 600.641 obliterated the entire statutory procedure of removing cases from circuit court to district court.³

Accordingly, we conclude that the repeal of MCL 600.641 divested the district court of authority to hear and decide plaintiff's case. Due to the statutory repeal, jurisdiction over plaintiff's case returned to the circuit court, because plaintiff had alleged that the amount in controversy exceeded the district court's upper jurisdictional limit. We therefore reverse the circuit court's decision and remand this case with instructions for the circuit court to entertain further proceedings regarding this matter.

Reversed and remanded for further proceedings consistent with this opinion. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen

McDonald, J. did not participate.

³ Our Supreme Court subsequently issued an administrative order implementing a replacement for the repealed statutory removal procedure. Under this administrative order, a circuit court was permitted to transfer an action to the district court, under MCR 2.227, based on the amount in controversy. Administrative Order No. 1998-1, 457 Mich lxxv-lxxxvi (1998). However, according to its plain language, that order applied only to cases filed after January 1, 1997. Because plaintiff filed her complaint before that date, the new transfer procedure cannot be applied in this case.