

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-14

Requested by: Owen K. Mehrer, Stark County State's
Attorney

Dated issued: April 28, 1988

- QUESTION PRESENTED -

Whether a clerk of district court may automatically discharge or cancel a judgment that has been transcribed to the clerk's court from another district or county court when the judgment is ten years old and the clerk has not received a certified copy of an affidavit of renewal from the court in which the judgment originated.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a clerk of district court may not automatically discharge or cancel a judgment that has been transcribed to the clerk's court from another district or county court when the judgment is ten years old, even though the clerk has not received a certified copy of an affidavit of renewal from the court in which the judgment originated. The clerk may, however, automatically cancel a judgment that has been transcribed to the clerk's court twenty years after the entry of the original judgment.

- ANALYSIS -

Pursuant to N.D.C.C. ch. 28-20, a clerk of court may "discharge" a judgment generally only when the judgment has been satisfied. See N.D.C.C. " 28-20-25 to 28-20-30. The judgment is "discharged" upon the clerk's records by the clerk noting the discharge in the judgment docket and in the margin of the judgment book where the original judgment was entered. N.D.C.C. ' 28-20-25. N.D.C.C. ch. 28-20 contains no provision permitting a judgment to be "discharged" upon the expiration of any particular time period.

The law does permit the clerk of court to "cancel" a judgment after ten or twenty years, depending on whether the judgment is renewed. N.D.C.C. ' 28-20-35 provides as follows:

28-20-35. Cancellation of judgment of record. --
After ten years after the entry of a judgment that has not been renewed, or after twenty years after the entry of a judgment that has been renewed, the judgment shall be canceled of record.

The clerk of the district court of the county wherein the judgment was originally docketed must notify the clerks of court in counties where the judgment has been transcribed of any cancellation or discharge of a judgment. See N.D.C.C. ' 28-20-27. Thus, the clerk of the district court for the county in which a judgment originated has an affirmative duty to immediately

notify the clerks of court in other counties when a judgment has been canceled by virtue of the fact that ten years have elapsed without renewal.

Under the law, a judgment acts as a lien on the judgment debtor's real property, except the homestead, within the county in which the judgment is docketed for ten years from the time of docketing the judgment in the county in which it was rendered. N. D. C. C. ' 28-20-13. A judgment creditor may extend the lien by filing an affidavit of renewal in the court in which the original judgment was entered. N. D. C. C. ' 28-20-22. The clerk of court for that court is required to docket the affidavit of renewal and enter in the judgment docket after the statement of the original judgment the fact, date, and amount of the renewal. Id. The entry and docketing of the affidavit of renewal acts to continue the lien on the real property in that county for an additional period of ten years. N. D. C. C. ' 28-20-23.

N. D. C. C. ' 28-20-22 provides that "[a] copy of the affidavit of renewal and the docket entries thereon, certified by the clerk of the district court where the judgment is filed, may be filed and docketed in any other county of the state in which a transcript of the original judgment was filed." (Emphasis supplied.) In counties to which the original judgment was transferred, "[t]he filing of a certified copy of such affidavit of renewal and the docket entries thereon . . . likewise shall continue and extend the lien of said judgment in such county." N. D. C. C. ' 28-20-23.

Under N. D. C. C. ' 28-20-22, there is no mandate that the clerk of the court where a judgment was first docketed file a copy of the affidavit of renewal and accompanying docket entries in any other court in which a transcript of the original judgment has been filed. This creates the possibility that a judgment has been renewed after the original ten-year effective period, even though the clerk of the district court in a county to which the judgment has been transcribed has no knowledge of that renewal.

The clerk of the district court in the county to which the judgment has been transcribed must assume that the clerk of court in the county of origination is performing the duties and responsibilities prescribed by N. D. C. C. ' 28-20-27. See N. D. C. C. ' 31-11-03(15). Since sending notice of renewal to the county where the judgment has been transcribed is merely discretionary and notification of cancellation or discharge is mandatory, the clerk of the district court in the county where the judgment has been transcribed must assume a judgment is valid even though ten years have elapsed since the time of docketing, unless the clerk has received notification of cancellation or discharge. To allow the clerk of a district court to which a judgment has been transcribed to cancel a judgment after ten years without notification of cancellation from the county of origination may be misleading and confusing to parties who rely upon the accuracy of public records.

Therefore, judgments transcribed from the court of origination should not be discharged or cancelled ten years after their original entry unless the clerk has received a notice of the discharge and cancellation of the judgment from

the clerk of court in the court where the judgment was originally docketed.

N. D. C. C. ' 28-20-35 provides that even if a judgment is renewed, the judgment shall be canceled of record twenty years after the original entry of the judgment. Thus, whether or not an affidavit of renewal of a judgment is filed, the judgment in both the court of origination and any court to which the judgment has been transcribed should be canceled of record twenty years after the original entry of the judgment. For that reason, the clerks of court in the counties to which the judgment has been transcribed may cancel of record transcribed judgments twenty years after the entry of the original judgment even if the clerk has received no notice of discharge or cancellation of the judgment.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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