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Jurisdiction of the Supreme Court: Nestor v. McDowell

JURISDICTION OF THE SUPREME COURT

N.Y. CONST. art. VI § 7

a. The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

b. If the legislature shall create new classes of actions and proceedings, the supreme court shall have jurisdiction over such classes of actions and proceedings, but the legislature may provide that another court or other courts shall also have jurisdiction and that actions and proceedings of such classes may be originated in such other court or courts.

COURT OF APPEALS

Nestor v. McDowell[1517]
(decided June 10, 1993)

In *Nestor*, the constitutional issue was whether the supreme court was divested of "its historic general power" of original and appellate jurisdiction if the state legislature enacted a statute prescribing remedies that would be meted out in a specific venue other than the supreme court.[1518]

After examining article VI, section 7(a) of the New York State Constitution, which provides in pertinent part "[t]he Supreme Court shall have general original jurisdiction in law and equity

1517. 81 N.Y.2d 410, 615 N.E.2d 991, 599 N.Y.S.2d 507 (1993).
1518. *Id.* at 415, 615 N.E.2d at 993, 599 N.Y.S.2d at 509.

and the appellate jurisdiction herein provided,"[1519] and by relying on article VI, section 7(b) of the New York Constitution,[1520] the *Nestor* court held that "when the legislature creates new remedies and classes of actions or procedures that are tracked to a particular court, it does not divest [the] Supreme Court of its historic general power."[1521]

The basis for the original complaint in *Nestor* was a landlord/tenant dispute involving an ejectment action.[1522] The plaintiff, Marianne Nestor, brought an action in the supreme court to evict the defendant tenants from a five room, rent stabilized, apartment on Fifth Avenue in Manhattan.[1523] The plaintiff's complaint alleged that the defendants breached their lease by installing plumbing and a washing machine without the consent of the landlord.[1524] The supreme court found that the defendants did breach the lease, however the court gave them time to remedy these lease violations.[1525] On appeal, the appellate division affirmed the decision of the supreme court holding that Real Property Actions and Proceedings Law section

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1519. *See* N.Y. CONST. art. VI, § 7(a). Section 7(a) provides in part:

> In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same household.

Id.

1520. N.Y. CONST. art. VI, § 7(b) provides:

> If the legislature shall create new classes of actions and proceedings, the supreme court shall have jurisdiction over such classes of actions and proceedings, but the legislature may provide that another court or other courts shall also have jurisdiction and that actions and proceedings of such classes may be originated in such other court or courts.

Id.

1521. *Nestor*, 81 N.Y.2d at 415, 615 N.E.2d at 993, 599 N.Y.S.2d at 509.

1522. *Id.* at 413, 615 N.E.2d at 992, 599 N.Y.S.2d at 508.

1523. *Id.*

1524. *Id.*

1525. *Id.*

753(4) ("RPAPL")[1526] was applicable to ejectment actions brought in supreme court.[1527]

The plaintiff argued that a narrower interpretation of RPAPL section 753(4) was warranted since the specific words and phrases used in the statute such as "warrant" and "such proceedings" referred to summary proceedings.[1528] More specifically, plaintiff argued that "warrants" are only issued when the ejectment action is brought in the civil court,[1529] as opposed to similar actions brought in supreme court, where the remedies would be identified as "writs of assistance" or "orders of ejectment."[1530] Thus, it was plaintiff's contention that the supreme court erred when it granted defendant time to cure the lease violations pursuant to RPAPL section 753 (4).[1531]

The court began by recognizing that the purpose of RPAPL section 753(4) "was . . . to 'permit tenants to remain in possession by curing the violation after the rights of the parties have been adjudicated.'"[1532] The court noted that if they allowed the proposed distinction between the supreme court and civil court in an ejection action, a landlord would only have to bring an action in supreme court rather than civil court to make the "cure remedy" unavailable to the tenant.[1533]

In *Nestor*, the court of appeals came to its conclusion using two different modes of analysis. The first and most persuasive was the constitutional argument. The other analysis came from the

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1526. REAL PROP. ACTS. § 753(4) (McKinney Supp. 1994). This statute provides: "In the event that such proceeding is based upon a claim that the tenant or lessee has breached a provision of the lease, the court shall grant a ten day stay of issuance of the warrant, during which time the respondent may correct such breach." *Id.*

1527. *Nestor*, 81 N.Y.2d at 413, 615 N.E.2d at 992, 599 N.Y.S.2d at 508.

1528. *Id.* at 413-14, 615 N.E.2d at 992, 599 N.Y.S.2d at 508.

1529. *Id.* at 414, 615 N.E.2d at 992, 599 N.Y.S.2d at 508.

1530. *Id.*

1531. *Id.*

1532. *Id.* at 414, 615 N.E.2d at 993, 599 N.Y.S.2d at 509 (quoting Post v. 120 East End Ave. Corp., 62 N.Y.2d 19, 27, 464 N.E.2d 125, 128, 475 N.Y.S.2d 821, 824 (1984)).

1533. *Id.*

existing case law on the issue. With respect to the constitutional analysis, the court adopted the statutory construction and policy grounds set forth in the appellate division case, *Killington Investors v. Leino*.[1534] The *Nestor* court found the appellate division's statutory construction of RPAPL section 753(4) to be supported by article VI, section 7(a) of the New York State Constitution.[1535] The court stated that the New York State Constitution affords the supreme court an "unqualified general jurisdiction."[1536] That grant of jurisdiction "includes 'all cases of every description in law and equity, from the most important and complicated to the most simple and insignificant.'"[1537] Furthermore, under article VI, section 7(b), the legislature may create new causes of action or judicial proceedings that may originate in other courts but the supreme court will always have concurrent jurisdiction over these matters.

The court of appeals analysis of the existing case law notes that under "ordinary statutory construction rules" the supreme court would not be barred from adjudicating this matter.[1538] The court relied on the decision in *Steinberg v. Steinberg*.[1539] The *Steinberg* case involved a wife who sued her husband for financial support.[1540] The issue in the case was whether the husband was responsible for supporting his wife pursuant to section 236 of the Domestic Relations Law.[1541] However, the husband claimed that section 236 could only be applied to him if

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1534. 148 A.D.2d 334, 538 N.Y.S.2d 812 (1st Dep't 1989).

1535. *Nestor*, 81 N.Y.2d at 415, 615 N.E.2d at 993, 599 N.Y.S.2d at 509.

1536. *Id. See* Weber v. Kowalski, 85 Misc. 2d 349, 353, 376 N.Y.S.2d 996, 1002 (Sup. Ct. Dutchess County 1975). In *Kowalski*, the court stated that the supreme court "is a statewide court of unlimited jurisdiction over causes of action known at common law or thereafter created, except that as to new causes of action statutorily created other courts may be granted concurrent jurisdiction." *Id.*

1537. *Nestor*, 81 N.Y.2d at 415, 615 N.E.2d at 993, 599 N.Y.S.2d at 509 (citations omitted).

1538. *Nestor*, 81 N.Y.2d at 414, 615 N.E.2d at 992, 599 N.Y.S.2d at 508.

1539. 18 N.Y.2d 492, 223 N.E.2d 558, 277 N.Y.S.2d 129 (1966).

1540. *Id.* at 493, 223 N.E.2d at 558, 277 N.Y.S.2d at 130.

1541. *Id.* at 494, 223 N.E.2d at 559, 277 N.Y.S.2d at 130; *see also* N.Y. DOM. REL. LAW § 236 (McKinney 1986 & Supp. 1994).

the action was commenced in the supreme court and since his wife commenced the proceedings in family court, the section did not apply to him.[1542] The court, however, found section 236 to apply to matrimonial actions brought in either supreme court or domestic relations court (now family court).[1543] The court reasoned that by enacting section 236, the legislature intended to establish the public policy of the state with respect to issues of financial support of spouses, regardless of the forum in which support is determined.[1544] Where an issue concerns a matter of public policy, "a policy so declared sometimes has to be followed by the courts in areas beyond the express reach of the statute for the sake of consistency in the administration of the law."[1545]

The reasoning in *Steinberg* is directly applicable to *Nestor*. The legislature, in enacting RPAPL section 753(4), was clearly defining public policy. The legislature wanted tenants to remain in possession and not be thrown out in the streets if it was determined in a summary proceeding that they knowingly or unknowingly violated their lease agreements. Thus, there would still be a violation of public policy if a tenant could be evicted after a similar hearing in supreme court.

Continuing with the statutory construction theme, *Nestor* cited *Matter of Toomey v. New York State Legislature*,[1546] for the proposition that when a court interprets the language of a statute, the words "are to be construed in light of surrounding circumstances, including the mischief to be corrected and the end to be attained."[1547] Therefore, since the "mischief to be corrected" in *Nestor* was tenants losing their homes, any court

1542. *Id.* at 494, 223 N.E.2d at 559, 277 N.Y.S.2d at 130.
1543. *Id.* at 498, 223 N.E.2d at 561, 277 N.Y.S.2d at 134.
1544. *Id.* at 497, 223 N.E.2d at 561, 277 N.Y.S.2d at 133.
1545. *Id.*
1546. 2 N.Y.2d 446, 141 N.E.2d 584, 161 N.Y.S.2d 81 (1957) (widow of a New York State assemblyman sued for workmen's compensation after her husband died of a heart attack in a hotel room while attending a session of the legislature in Albany).
1547. *Id.* at 448, 141 N.E.2d at 586, 161 N.Y.S.2d at 83 (citations omitted).

dealing with that situation should be sensitive to the spirit and the purpose of the statute.

Whether one looks to the State Constitution for support or to existing case law on the subject, it seems irrefutable that the supreme court will always maintain its power of original jurisdiction and appellate review. The strongest argument in support of maintaining the power of the supreme court is that laws need to be applied consistently. Without consistent application the laws will lose their credibility and a party's right to remedies or protections would no longer be a function of the strength of their particular case, but would depend on the court in which a matter was brought.