- Spitz presented no documents that showed she and McCannon had signed them as husband and wife.
- In July 2003, Spitz and McCannon filed a "Subordinate Deed of Trust," in which they represented that they were single persons.
- In October 2003, Spitz executed a "Deed of Reconveyance" as a single person.
- From 2003 to 2005, Spitz represented in deed documents that she was single, and the documents described the property as Spitz' sole property.
- Spitz' tax returns for 1995 through 2005 show that she did not represent herself as married: "In fact, by stating she was the head of the household, the filing of [Spitz'] tax returns actually shows that [she] held herself out to be unmarried."
- McCannon's obituary identified Spitz as a "longtime companion."

We conclude that the court was not clearly wrong in finding that the vast majority of objective evidence showed that Spitz and McCannon did not intend to create a common-law marriage and did not conduct their affairs as though a common-law marriage existed. Under Colorado law, we review the trial judge's conclusion for abuse of discretion. We find none here.

AFFIRMED.

WRIGHT, J., not participating.

STATE OF NEBRASKA, APPELLEE, V. GLEN E. RIENSCHE, APPELLEE, AND H.M., ALLEGED VICTIM, APPELLANT.

___ N.W.2d ___

Filed May 11, 2012. No. S-11-280.

1. **Statutes: Appeal and Error.** Statutory interpretation presents a question of law, for which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.
2. **Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken.
3. **Final Orders: Appeal and Error.** An order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment,

(2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered.

4. **Witnesses: Contempt: Final Orders: Appeal and Error.** A civil contempt order against a nonparty witness is a final and appealable order.
5. **Criminal Law: Witnesses: Testimony: Case Disapproved.** Insofar as it recognizes a public ignominy privilege, Neb. Rev. Stat. § 25-1210 (Reissue 2008) does not apply to a criminal case. To the extent that *State v. Ellis*, 208 Neb. 379, 303 N.W.2d 741 (1981), and *State v. Bittner*, 188 Neb. 298, 196 N.W.2d 186 (1972), can be read to suggest otherwise, they are disapproved.

Appeal from the District Court for Lancaster County: PAUL D. MERRITT, JR., Judge. Affirmed.

Randall Wertz, John F. Recknor, and Susan L. Kirchmann, of Recknor, Wertz & Associates, for appellant.

Jon Bruning, Attorney General, and James D. Smith for appellee State of Nebraska.

HEAVICAN, C.J., CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

The issue in this appeal is whether an alleged victim of child sexual abuse may claim a privilege against testifying in the criminal prosecution of the alleged perpetrator pursuant to Neb. Rev. Stat. § 25-1210 (Reissue 2008), which provides, "When the matter sought to be elicited would tend to render the witness criminally liable or to expose him or her to public ignominy, the witness is not compelled to answer . . . ." The district court for Lancaster County found the privilege against exposure to public ignominy did not apply to the victim because her testimony was highly material to the crimes charged. The victim appeals. Although our reasoning differs from that of the district court, we affirm.

BACKGROUND

Sometime prior to August 2010, law enforcement authorities learned that Glen E. Riensche may have sexually assaulted H.M., his stepdaughter, when she was approximately 7 years old. H.M. was born in August 1986 and currently resides in another state. When questioned by law enforcement in 2010,

H.M. discussed the allegations and participated in a recorded telephone call with Riensche. In November 2010, the State charged Riensche with first degree sexual assault and sexual assault of a child.

Pursuant to a subpoena, H.M. appeared with counsel in Nebraska on March 7, 2011, the day Riensche's trial was scheduled to begin. H.M. participated in a deposition in which Riensche's counsel attempted to question her about the charges filed against Riensche. Before H.M. answered, her counsel stated, "My client's going to refuse to testify." He explained the testimony "would render her infamous, would disgrace her to the public and [would] expose her to public ignominy pursuant to Nebraska statutes and [the] Nebraska constitution." Counsel stipulated that H.M. had previously spoken to law enforcement officers, but stated that H.M. did not want "to get into the specifics of the allegation" because she was the mother of three young children and did not want them or her "to be exposed to any criminal proceeding." After confirming that H.M. would refuse to testify about the criminal charges, Riensche's counsel discontinued questioning. When the prosecutor sought to clarify the basis for H.M.'s refusal by asking if her testimony would subject her to potential prosecution, her counsel replied, "Not that we know of" and confirmed that H.M. was refusing to testify only because she believed her testimony would expose her to public ignominy. On cross-examination by the prosecutor, H.M., through her counsel, again asserted the privilege against exposure to public ignominy and refused to answer substantive questions about the criminal case.

The deposition was then concluded, and the parties appeared before the district court. The prosecutor made an oral motion to compel H.M.'s testimony, and the court scheduled a subsequent hearing on that issue. Riensche's trial did not take place as scheduled.

At the subsequent hearing, H.M.'s counsel confirmed H.M. was asserting the privilege codified in § 25-1210. Counsel explained that H.M. had started a "new life" in another state and did not "want to testify about an alleged incestuous assault that happened many, many years ago." The prosecutor

argued that the privilege against exposure to public ignominy did not apply if the testimony was material to a criminal prosecution.

In an order dated March 14, 2011, the district court opined that a witness could "be compelled to testify, notwithstanding the privilege created by § 25-1210," if "the witness' testimony is material to the issue to which the testimony is addressed." In finding H.M.'s testimony could be compelled, the court reasoned H.M. was "the alleged victim of the allegations against the defendant" and noted it was "difficult to imagine a more material witness under the circumstances." The district court ordered H.M. to appear at Riensche's trial on April 4.

H.M. moved to stay the order compelling her to testify pending her appeal. At a March 31, 2011, hearing, H.M. testified that despite the court's order, she would refuse to testify if she were called as a witness at trial. The prosecutor asked the court to hold H.M. in contempt and to impose an appropriate sanction. After finding by clear and convincing evidence that H.M.'s conduct was "willful and contumacious," the court found H.M. "to be in willful contempt of court." The court committed H.M. to the county jail "for a period of 90 days or until such time as she testifies as ordered, whichever occurs first." The court granted H.M.'s motion to stay execution of the sentence pending her appeal. H.M. perfected this appeal on April 1, and we moved it to our docket on our own motion pursuant to our statutory authority to regulate the caseloads of the appellate courts of this state.[1]

ASSIGNMENTS OF ERROR

H.M. assigns that the district court erred in interpreting § 25-1210, (1) to preclude her from asserting a privilege against testifying and (2) in a manner that violates public policy.

STANDARD OF REVIEW

[1] In this appeal, we are asked to determine the scope of the public ignominy privilege set forth in § 25-1210. Statutory interpretation presents a question of law, for which

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[1] See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.[2]

ANALYSIS

JURISDICTION

[2,3] Because it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it,[3] we note the reasons for our agreement with the parties that we have jurisdiction over this appeal. Generally, for an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken.[4] An order is final for purposes of appeal if it affects a substantial right and (1) determines the action and prevents a judgment, (2) is made during a special proceeding, or (3) is made on summary application in an action after judgment is rendered.[5]

We apply these principles of finality to an order affecting a party to a case. But here, H.M. is a nonparty witness charged with civil contempt for refusing to testify in a criminal case based upon the assertion of an evidentiary privilege. The contempt order requiring her to either testify or spend up to 90 days in county jail does not fit neatly within our standard analytical framework for finality, although we have no doubt that it seems very final to H.M.

As we have recently noted, federal courts permit nonparties to appeal from interlocutory, civil contempt orders.[6] This policy is based upon recognition that while such orders may be interlocutory with respect to the parties to an action, they are

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[2] *State v. Jimenez, ante* p. 95, 808 N.W.2d 352 (2012); *State v. Parks*, 282 Neb. 454, 803 N.W.2d 761 (2011).

[3] *State v. Yos-Chiguil*, 281 Neb. 618, 798 N.W.2d 832 (2011).

[4] *StoreVisions v. Omaha Tribe of Neb.*, 281 Neb. 238, 795 N.W.2d 271 (2011), *modified on denial of rehearing* 281 Neb. 978, 802 N.W.2d 420.

[5] *Id.*; *Schropp Indus. v. Washington Cty. Atty.'s Ofc.*, 281 Neb. 152, 794 N.W.2d 685 (2011).

[6] *Schropp Indus., supra* note 5; *Smeal Fire Apparatus Co. v. Kreikemeier*, 279 Neb. 661, 782 N.W.2d 848 (2010), *disapproved on other grounds, Hossaini v. Vaelizadeh, ante* p. 369, 808 N.W.2d 867 (2012).

final from the perspective of the nonparty witness found to be in contempt.[7] In an early recognition of this principle, the U.S. Supreme Court concluded that in "cases in which the [contempt] proceedings are against one not a party to the suit, and cannot be regarded as interlocutory[,] we are of opinion that there is a right of review."[8] In another early case, the Court distinguished between an interlocutory order requiring a nonparty witness to produce certain evidence and an order holding the witness in contempt for failure to do so, noting that the "power to punish being exercised[,] the matter becomes personal to the witness and a judgment as to him."[9] More recently, the Court has stated, "The right of a nonparty to appeal an adjudication of contempt cannot be questioned. The order finding a nonparty witness in contempt is appealable notwithstanding the absence of a final judgment in the underlying action."[10] Another federal court has noted that "[t]he contempt order effectively transforms the 'interlocutory' into the 'final' by giving the [nonparty] witness a distinct and severable interest in the underlying action."[11]

[4] We conclude that this approach is sensible and fair. The rule that only final orders are appealable is designed to prevent piecemeal review, chaos in trial procedure, and a succession of appeals granted in the same case to secure advisory opinions to govern further actions of the trial court.[12] That purpose is not advanced by requiring a nonparty witness who has been held in contempt to await the eventual resolution of the underlying case by the parties before obtaining appellate review. By that

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[7] See, *Catholic Conf. v. Abortion Rights Mobilization*, 487 U.S. 72, 108 S. Ct. 2268, 101 L. Ed. 2d 69 (1988); *Alexander v. United States*, 201 U.S. 117, 26 S. Ct. 356, 50 L. Ed. 686 (1906); *Bessette v. W. B. Conkey Co.*, 194 U.S. 324, 24 S. Ct. 665, 48 L. Ed. 997 (1904).

[8] *Bessette, supra* note 7, 194 U.S. at 338.

[9] *Alexander, supra* note 7, 201 U.S. at 122.

[10] *Catholic Conf., supra* note 7, 487 U.S. at 76.

[11] *U.S. v. Sciarra*, 851 F.2d 621, 628 (3d Cir. 1988).

[12] See, *Smith v. Lincoln Meadows Homeowners Assn.*, 267 Neb. 849, 678 N.W.2d 726 (2004); *State v. Meese*, 257 Neb. 486, 599 N.W.2d 192 (1999).

time, such review may be meaningless if the nonparty witness has completed the term of imprisonment imposed as a sanction for contempt. Accordingly, we adopt the principle set forth in federal cases and hold that a civil contempt order against a nonparty witness is a final and appealable order.

SCOPE OF PUBLIC IGNOMINY PRIVILEGE

The Nebraska rules of evidence[13] apply generally to all civil and criminal proceedings[14] and include provisions relat-ing to privileges,[15] which provisions "apply at all stages of all actions, cases, and proceedings."[16] Rule 501 provides:

> Except as otherwise required by the Constitution of the United States or the State of Nebraska or provided by Act of Congress, or the Legislature of the State of Nebraska, by these rules or by other rules adopted by the Supreme Court of Nebraska which are not in conflict with laws governing such matters, no person has the privilege to:
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> (1) Refuse to be a witness; or
> (2) Refuse to disclose any matter; or
> (3) Refuse to produce any object or writing; or
> (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

The privileges set forth in article 5 of the rules of evidence[17] do not include a public ignominy privilege. Thus, we must look to other state or federal statutes, or the state or federal Constitution, for the source of the privilege claimed by H.M.

The parties agree that the sole source of the public ignominy privilege is § 25-1210, which actually identifies two distinct privileges. Under § 25-1210 and subject to an exception not applicable here, a witness may not be compelled to testify "[w]hen the matter sought to be elicited would tend to render

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[13] Neb. Evid. R. 101 to 1301, Neb. Rev. Stat. §§ 27-101 to 27-1301 (Reissue 2008 & Cum. Supp. 2010).

[14] Neb. Evid. R. 1101(2).

[15] Neb. Evid. R. 501 to 513.

[16] Neb. Evid. R. 1101(3).

[17] Neb. Evid. R. 503 to 510.

the witness criminally liable" or tend "to expose him or her to public ignominy." The word "ignominy" is generally defined to mean "[p]ublic disgrace or dishonor."[18] Long ago, the Iowa Supreme Court concluded that the term "was not intended to apply to all acts which might justify public censure or disapproval, but those of a more serious nature, which would tend to expose the perpetrator to public hatred or detestation or dishonor."[19] Although we acknowledge a Georgia appellate opinion to the contrary,[20] and with due respect to H.M.'s reasons for asserting the privilege, we question whether a victim's truthful testimony about a crime perpetrated upon him or her would subject that person to "public ignominy."[21] But the State did not challenge the assertion of the privilege on that basis, the district court did not address the issue, and we need not do so in order to resolve this appeal.[22]

As noted, § 25-1210 refers to two separate and distinct privileges: a privilege against self-incrimination and a privilege against exposure to public ignominy. The latter is not a part of the former. In *Brown v. Walker*,[23] the U.S. Supreme Court held that the Fifth Amendment privilege against self-incrimination was not intended to shield a witness from giving testimony which would expose the witness to disgrace or disrepute. The Court noted that the "extent to which the witness is compelled to answer such questions as do not fix upon him a criminal culpability is within the control of the legislature."[24]

The Nebraska Legislature has exercised such control by its enactment of § 25-1210. Although this is an appeal from a civil contempt order, it originates from the assertion of a

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[18] Black's Law Dictionary 814 (9th ed. 2009).

[19] *Mahanke v. Cleland*, 76 Iowa 401, 405, 41 N.W. 53, 55 (1888).

[20] *Wynne v. State*, 139 Ga. App. 355, 228 S.E.2d 378 (1976).

[21] See § 25-1210.

[22] See, *State v. Rogers*, 277 Neb. 37, 760 N.W.2d 35 (2009); *State v. Sommer*, 273 Neb. 587, 731 N.W.2d 566 (2007).

[23] *Brown v. Walker*, 161 U.S. 591, 16 S. Ct. 644, 40 L. Ed. 819 (1896).

[24] *Id.*, 161 U.S. at 598.

privilege by a witness testifying in a criminal case. Section 25-1210 is included in chapter 25 of the Nebraska Revised Statutes, entitled "Courts; Civil Procedure." Chapter 29, entitled "Criminal Procedure," includes no similar privilege. Chapter 25 and chapter 29 do not include general scope provisions.

Some statutes found within chapter 29 specifically incorporate statutory procedures from chapter 25. For example, Neb. Rev. Stat. § 29-1905 (Reissue 2008), pertaining to depositions in criminal cases, provides that "[t]he proceedings in taking the examination of such witness and returning it to court shall be governed in all respects as the taking of depositions in all civil cases." And Neb. Rev. Stat. § 29-1206 (Reissue 2008) provides that applications for continuances in criminal cases "shall be made in accordance with section 25-1148," subject to certain modifications. The parties have directed us to no provision in chapter 29 which incorporates the public ignominy privilege found in § 25-1210, and we have found none.

On several occasions, this court has specifically declined to apply a civil procedure statute in a criminal case. We held long ago in *Hubbard v. State*[25] that a defendant could not rely upon a statute governing motions for new trials in civil cases in order to file a motion which was time barred under the corresponding criminal procedure statute. We noted that "the provisions of the code [of civil procedure], as indicated by its title, refer only to new trials in civil actions."[26] In *Huckins v. State*,[27] we held that a witness subpoenaed to testify in a criminal case could not insist on advance payment of his fees as a condition precedent to his appearance pursuant to a civil procedure statute. Noting the absence of any provision of law imposing a prepayment requirement in criminal cases, the court concluded that "[i]t would require a very plain provision of law to justify the belief that the legislative branch of

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[25] *Hubbard v. State*, 72 Neb. 62, 100 N.W. 153 (1904).

[26] *Id.* at 67, 100 N.W. at 154.

[27] *Huckins v. State*, 61 Neb. 871, 86 N.W. 485 (1901).

the government intended to interpose such obstacles to the prosecution of crime."[28] More recently, in *State v. Merrill*,[29] we held that the State could not rely upon civil procedure statutes as legal authority for an appeal in a criminal case. We noted that the statutes upon which the State relied were "statutes of general application found in chapter 25 of the Nebraska Revised Statutes relating to civil procedure"[30] and did not provide authorization for the State's attempted appeal in a criminal case.

In other cases, however, the line of demarcation between the scope of civil and criminal procedural statutes is less distinct. In *State v. Micek*[31] and *State v. Mills*,[32] both criminal appeals, we held that copies of prior judgments used to prove that the defendants were habitual criminals were properly authenticated pursuant to Neb. Rev. Stat. §§ 25-1285 (Reissue 1995) and 25-1286 (Reissue 1979). And in *State v. Bittner*[33] and *State v. Ellis*,[34] we referenced § 25-1210 without specifically addressing its applicability to a criminal case. In *Bittner*, a prosecution witness refused to answer certain questions on cross-examination on the ground that the answers would incriminate her. We noted that the privilege against self-incrimination was based upon the Fifth Amendment to the U.S. Constitution and on § 25-1210. While the opinion includes a survey of cases dealing with whether "impeachment on moral grounds is permissible,"[35] that discussion is largely dicta because the witness asserted only the privilege against self-incrimination. The dispositive issue was whether assertion of the privilege deprived the defendant of his right to confrontation. We concluded that it did not, because the restricted

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[28] *Id.* at 872, 86 N.W. at 485.

[29] *State v. Merrill*, 273 Neb. 583, 731 N.W.2d 570 (2007).

[30] *Id.* at 586, 731 N.W.2d at 573.

[31] *State v. Micek*, 193 Neb. 379, 227 N.W.2d 409 (1975).

[32] *State v. Mills*, 199 Neb. 295, 258 N.W.2d 628 (1977).

[33] *State v. Bittner*, 188 Neb. 298, 196 N.W.2d 186 (1972).

[34] *State v. Ellis*, 208 Neb. 379, 303 N.W.2d 741 (1981).

[35] *Bittner, supra* note 33, 188 Neb. at 300, 196 N.W.2d at 188.

questioning dealt only with a collateral matter unrelated to the guilt or innocence of the defendant.

In *Ellis*, we addressed a defendant's contention that his cross-examination of a prosecution witness was unduly restricted by her assertion of the privileges against self-incrimination and public ignominy in response to questions about prior sexual conduct. We concluded without further analysis that the ruling sustaining the witness' right to assert the privilege was "fully in accord with . . . § 25-1210."[36] Again, we did not explain the basis for applying that civil procedure statute in a criminal case.

Recognizing a right of a recalcitrant witness to assert a public ignominy privilege in a criminal case would pose an obstacle to the prosecution of crime. As the U.S. Supreme Court observed more than 100 years ago, the danger of recognizing this privilege in a criminal case

> is that the privilege may be put forward for a sentimental reason, or for a purely fanciful protection of the witness against an imaginary danger, and for the real purpose of securing immunity to some third person, who is interested in concealing the facts to which [the witness] would testify. Every good citizen is bound to aid in the enforcement of the law, and has no right to permit himself, under the pretext of shielding his own good name, to be made the tool of others, who are desirous of seeking shelter behind [the witness'] privilege.[37]

We conclude here, as we did in *Huckins*, that "[i]t would require a very plain provision of law to justify the belief that the legislative branch of the government intended to interpose such obstacles to the prosecution of crime."[38]

[5] We find no such provision. Had the Legislature intended to permit a witness in a criminal case to assert a public ignominy privilege, it could have included the privilege in article 5 of the Nebraska rules of evidence, enacted a criminal procedure statute specifically recognizing the privilege, or

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[36] *Ellis, supra* note 34, 208 Neb. at 395, 303 N.W.2d at 751.

[37] *Brown, supra* note 23, 161 U.S. at 600.

[38] *Huckins, supra* note 27, 61 Neb. at 872, 86 N.W. at 485.

enacted a criminal procedure statute incorporating § 25-1210 by reference. It did none of those things. While we acknowledge that some of our prior cases imply that § 25-1210 is applicable to a criminal case, we specifically reject that implication with respect to the public ignominy privilege. We further note that the privilege against self-incrimination recognized in § 25-1210 has an independent constitutional basis, whereas the public ignominy privilege does not. We therefore hold that insofar as it recognizes a public ignominy privilege, § 25-1210 does not apply to a criminal case. To the extent that *Bittner*[39] and *Ellis*[40] can be read to suggest otherwise, they are disapproved.

We do not hold or suggest that a provision of chapter 25 of the Nebraska Revised Statutes must be specifically incorporated by a provision of chapter 29 to apply to a criminal case. We acknowledge that some procedural and evidentiary statutes found in chapter 25 may harmoniously apply to a criminal case. And we acknowledge that "[t]itle heads, chapter heads, section and subsection heads or titles . . . in the statutes of Nebraska, supplied in compilation, do not constitute any part of the law."[41] But because the public ignominy privilege would impose an obstacle to the prosecution of crime, it is not available to a witness in a criminal case absent a clear indication that the Legislature intended that it should. And as we have noted, we find no such indication of legislative intent.

The district court concluded that H.M. could be compelled to testify because the public ignominy privilege did not apply to testimony concerning a material issue in a criminal case. We disagree with this reasoning because § 25-1210 does not include a materiality exception. But because we conclude that the public ignominy privilege cannot be asserted by a witness in a criminal case, regardless of the materiality of the testimony, we affirm the district court's ruling.[42]

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[39] *Bittner, supra* note 33.

[40] *Ellis, supra* note 34.

[41] Neb. Rev. Stat. § 49-802(8) (Reissue 2010).

[42] See, *Doe v. Board of Regents, ante* p. 303, 809 N.W.2d 263 (2012); *Tolbert v. Jamison*, 281 Neb. 206, 794 N.W.2d 877 (2011).

CONCLUSION

For the reasons discussed, we conclude that the district court did not err in ordering H.M. to testify and in exercising its contempt power to enforce its order. We observe that the fact that the State *may* compel H.M. to testify does not necessarily mean that it *should.* But that question must be left to the judgment and discretion of the prosecutor.

AFFIRMED.

WRIGHT, J., not participating.

BRIAN SHIPLEY, APPELLANT, V. DEPARTMENT OF ROADS, AN AGENCY OF THE STATE OF NEBRASKA, AND CASS COUNTY, NEBRASKA, A POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA, APPELLEES.

KENNETH E. STODDARD AND SONDRA K. STODDARD, GUARDIANS OF JAMIN L. STODDARD, AN INCAPACITATED PERSON, APPELLANTS, AND NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, AN AGENCY OF THE STATE OF NEBRASKA, APPELLEE, V. DEPARTMENT OF ROADS, AN AGENCY OF THE STATE OF NEBRASKA, AND CASS COUNTY, NEBRASKA, A POLITICAL SUBDIVISION OF THE STATE OF NEBRASKA, APPELLEES.

___ N.W.2d ___

Filed May 11, 2012. Nos. S-11-293, S-11-294.

1. **Summary Judgment.** Summary judgment is proper when the pleadings and evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence.
3. **Administrative Law: Judgments.** Interpretation of the Manual on Uniform Traffic Control Devices presents a question of law.
4. **Judgments: Appeal and Error.** When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court.