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**CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS**

**No. A-23-922**

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**IN THE NEBRASKA COURT OF APPEALS**

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**STATE OF NEBRASKA,**

**Appellee,**

**v.**

**JACOB W. POLLOCK,**

**Appellant.**

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**APPEAL FROM THE DISTRICT COURT OF**

**JEFFERSON COUNTY, NEBRASKA**

**The Honorable David J. A. Bargaen, District Judge**

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**BRIEF OF APPELLEE**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS .....2

TABLE OF AUTHORITIES .....3

STATEMENT OF THE CASE.....4

    A. Nature of the Case.....4

    B. Issues Before the District Court .....4

    C. How the Issues Were Decided in the District Court .....4

    D. Scope of Review.....4

PROPOSITIONS OF LAW .....5

STATEMENT OF FACTS.....5

ARGUMENT .....7

CONCLUSION .....9

## TABLE OF AUTHORITIES

### CASES

<i>Houser v. American Paving Asphalt, Inc.</i> , 299 Neb. 1, 907 N.W.2d 16 (2018).....	4-5, 8
<i>Schultz v. State</i> , 32 Neb. App. 59, 992 N.W.2d 779 (2023).....	5, 8
<i>Scroggins v. Mosbrucker</i> , 2023 WL 2576820 (Neb. Ct. App. No. A-22-282, Mar. 21, 2023)....	5, 8
<i>State v. Johnson</i> , 310 Neb. 527, 967 N.W.2d 242 (2021).....	4
<i>Steffy v. Steffy</i> , 287 Neb. 529 .....	5, 8

### OTHER AUTHORITIES

Neb. Ct. R. App. P. § 2-110(A) .....	7
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## **Statement of the Case**

### **A. Nature of the Case**

This is a direct appeal of Jacob Pollock’s plea-based conviction for DUI – 1st offense. The sole issue raised on appeal before this Court was whether the district court erred in dismissing Pollock’s appeal as untimely.

### **B. Issues Before the District Court**

As relevant to this appeal, the issue before the district court was whether to accept Pollock’s appellate brief, filed after multiple extensions, despite having no leave of the court to do so.

### **C. How the Issues Were Decided in the District Court**

The district court denied Appellant’s fourth motion for additional time, concluded that Appellant’s filing of his brief on October 11, 2023, without leave of court was a nullity, and dismissed Pollock’s appeal.

### **D. Scope of Review**

In an appeal of a criminal case from the county court, the district court sits as an intermediate court of appeals and its review is limited to an examination of the record for error or abuse of discretion. *State v. Johnson*, 310 Neb. 527, 967 N.W.2d 242 (2021). When sitting as an intermediate appellate court, the district court has inherent power common to appellate courts and an appellate court has inherent authority to regulate such things as timing of record preparation, extension of brief dates, and argument dates. *Houser v. American Paving Asphalt, Inc.*, 299 Neb. 1, 907 N.W.2d 16 (2018).

## **Propositions of Law**

### **I.**

A district court's ruling on a motion to extend the time for filing a statement of errors is reviewed for an abuse of discretion. *Houser v. American Paving Asphalt, Inc.*, 299 Neb. 1, 907 N.W.2d 16 (2018).

### **II.**

District courts granting or denying motions to dismiss at the trial level are reviewed on appeal for an abuse of discretion. *See e.g., Schultz v. State*, 32 Neb. App. 59, 992 N.W.2d 779 (2023); *See also Scroggins v. Mosbrucker*, 2023 WL 2576820 (Neb. Ct. App. No. A-22-282, Mar. 21, 2023).

### **III.**

In situations where a brief does not comply with the formatting and content rules, such as failing to include an assignment of errors section, an appellate court may proceed as though the appellant had failed to file a brief or, alternatively, may examine the proceedings for plain error, and the decision to proceed on plain error is at the discretion of the appellate court. *Steffy v. Steffy*, 287 Neb. 529, 843 N.W.2d 655 (2014).

## **Statement of Facts**

On March 10, 2023, following a stipulated bench trial, Pollock was convicted of DUI – 1st offense, a class W misdemeanor. (T72-77) Pollock was sentenced on April 26, 2023, to 7 days in jail and his license was revoked for 6 months. (T80) Pollock filed his notice of appeal and his praecipes for a transcript and a bill of exceptions on May 4, 2023. (T90-99) Pollock filed an amended praecipe for bill of exceptions on May 11, 2023. (T102)

A notice of payment was filed on May 23, 2023, indicating from the Clerk of the Court that the deposit for the bill of exceptions was made, so the court ordered the court reporting personnel to prepare the bill of exceptions. (T108) However, on June 26 and June 27, 2023, notices were filed that indicated Pollock had failed to pay the

remainder of the cost of his bill of exceptions as of June 26, 2023. (T116; T119) A subsequent receipt showed that Pollock eventually paid the balance for his bill of exceptions on July 26, 2023. (T123-124)

On July 20, 2023, the Jefferson County District Court filed an appeal scheduling order that stated Appellant's brief was to be filed and served within 30 days and "failure of the Appellant to timely file a brief in accordance with this Order without leave of Court for an extension of time subjects the appeal to dismissal." (T126) Appellant filed his first motion to continue asking for an unspecified period of "additional time" to submit a brief on August 18, 2023. (T129) This motion was granted, and Appellant's due date was extended for 14 days, putting his deadline to file a brief on September 5, 2023. (T142) On September 5, 2023, Appellant filed a second motion to continue asking again for an unspecified period of "additional time" to submit his brief. (T131) The district court filed an order on that same day granting Appellant's motion for an extension for another 14 days, setting his next deadline for September 19, 2023. (T133; T142)

On September 14, 2023, Appellant filed his third motion for additional time, stating "we are still attempting to retrieve additional material to support the brief and need additional time to do so," asking for an additional 3 weeks. (T135) On September 15, 2023, the district court filed an order granting Appellant's motion but limiting the extension to only 2 weeks, setting his deadline for October 2, 2023, and stating "This is the last extension the Court will grant Defendant for submission of his brief. . . . Thereafter, the briefing schedule will proceed with or without Defendant's initial brief." (T137) On October 2, 2023, Appellant filed a fourth motion for additional time stating that "the individual hired to prepare the brief in this matter is still going through the material and it is taking longer than she anticipated" and asked for an additional 7 days to submit his brief. (T139) Without response from the district court granting him additional time, Appellant filed his brief on October 11, 2023. (T142)

On October 17, 2023, the district court filed an order addressing Appellant's fourth motion for additional time and the filing of his brief on October 11. The court set out the timeline from above following the docketing of the appeal and noted that only Appellant's third and

fourth motions gave any explanation for the requested extensions, the third stating he was attempting to retrieve additional material, “even though the record on which the appeal would be decided had already been filed with the Court months earlier.” (T142-143) The court reasoned that Appellant was given ample notice through the court’s July 20 order that he would be in default if his initial brief was not timely filed and was notified in the court’s final order of extension that after October 2, 2023, the briefing schedule would proceed with or without Appellant’s initial brief. (T143) The court noted that with Appellant not filing his brief on October 2, 2023, as directed, the Appellee had nothing in which to respond, and the July 20 order made it clear that Appellant’s failure to timely file his brief without approved extension subjected the appeal to dismissal. (T143-144) Thus, the district court concluded that Appellant’s fourth motion for additional time was denied, Appellant’s filing of his brief on October 11, 2023, without leave of Court as required by the July 20, 2023, order was a nullity, and “given that Appellant did not avail himself of the Court’s numerous filing extensions in this matter, his appeal is dismissed pursuant to the Court’s July 20, 2023, Order, and the decision of the County Court is affirmed.” (T144) Pollock now appeals the district court’s dismissal.

### **Argument**

Pollock asserts that his final extension granted on September 15, 2023, did not give him notice that failure to file his brief in a timely manner would subject him to dismissal of his appeal under Neb. Ct. R. App. P. § 2-110(A) but implied that the appeal would continue under the prior briefing schedule. (Brief of Appellant, p. 7) He acknowledges that the court had warned the parties that failure to comply with the original brief dates would subject the appellant to dismissal in the original order but argues that that order was revised several times by the court granting the extensions, so that order could not be relied upon to give adequate notice of the possibility of default for failure to file a timely brief. (Brief of Appellant, pp. 7-8)

Neb. Ct. R. App. P. § 2-110(A) provides in relevant part:

(A). . . If appellant has sought and obtained an extension of brief date and the court's order granting the extension subjects the appeal to dismissal without further notice, failure to file the brief within the extended time allowed may result in dismissal of the appeal without further notice. Under no circumstances shall more than one notice of default be required.

A district court's ruling on a motion to extend the time for filing a statement of errors is reviewed for an abuse of discretion, *Houser, supra*, so the State submits this same abuse of discretion standard applies to a district court's ruling on motions to extend the time for filing an appellate brief. A district court's ruling on dismissing an appeal should also be reviewed for an abuse of discretion because district courts granting or denying motions to dismiss at the trial level are reviewed on appeal for an abuse of discretion. *See e.g., Schultz v. State*, 32 Neb. App. 59, 992 N.W.2d 779 (2023) (the exercise of the power to dismiss a matter for lack of prosecution rests in the sound discretion of the trial court); *Scroggins v. Mosbrucker*, 2023 WL 2576820 (Neb. Ct. App. No. A-22-282, Mar. 21, 2023) (district court did not abuse its discretion in finding Nebraska to be an inconvenient forum and in dismissing Scroggins' complaint). Further, in situations where a brief does not comply with the formatting and content rules, such as failing to include an assignment of errors section, an appellate court may proceed as though the appellant had failed to file a brief or, alternatively, may examine the proceedings for plain error, and the decision to proceed on plain error is at the discretion of the appellate court. *Steffy v. Steffy*, 287 Neb. 529, 843 N.W.2d 655 (2014).

The district court did not abuse its discretion in dismissing Appellant's appeal. Appellant did not appear to pursue his appeal from the start when he failed to pay the balance for the bill of exceptions until almost 2 months after he filed his notice of appeal. After the court set initial deadlines 77 days after Appellant filed his notice of appeal, giving Appellant 30 days to file his brief, Appellant received an additional 42 days in extensions to file his brief. This means that Appellant had a total of 149 days from the date he filed his notice of appeal on May 4, 2023, until his final deadline set for October 2, 2023,



to file an appellate brief. Additionally, Appellant filing his brief on October 11, 2023, was still untimely as to the 7 additional days he requested from the district court on October 2, 2023, so even if his fourth motion for additional time would have been granted, he still would have been untimely as to that extension.

Further, the district court's July 20 order gave Appellant notice that failure to timely file a brief without leave for an extension subjects the appeal to dismissal. Then the court explicitly notified Appellant in its September 15 order that the two-week extension would be the last extension granted by the court and the briefing schedule would proceed with or without the Appellant's brief, drawing Appellant's attention back to the original July 20 order that set forth the consequences for failing to timely file a brief. Thus, contrary to Appellant's argument here, he was absolutely on notice that failure to timely file a brief, even after all the extensions he was granted, would subject his appeal to dismissal. Therefore, the court did not abuse its discretion in dismissing Pollock's appeal when Appellant failed to file his brief by October 2, 2023, after 77 days of extensions, had explicit notice that no more extensions would be granted, did not have leave from the court to file his brief after the final deadline given by the court, and further failed to file his brief within the 7 additional days he asked for in the fourth motion for additional time.

### **Conclusion**

For the reasons noted above, the Appellee respectfully requests that this Court affirm the judgment of the district court dismissing Pollock's appeal.

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### **Certificate of Compliance**

I hereby certify that this brief complies with the word count and typeface requirements of Neb. Ct. R. App. P. § 2-103. This brief contains 2,238 words, excluding this certificate. This brief was created using Word Microsoft 365.

**s/Teryn Blessin**  
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# Certificate of Service

I hereby certify that on Thursday, April 25, 2024 I provided a true and correct copy of this *Brief of Appellee State of NE* to the following:

Jacob W Pollock represented by Dustin Allen Garrison (23812) service method: Electronic Service to **ae1249@hotmail.com**

Signature: /s/ BLESSIN, TERYN R (27022)