

Court of Appeals of Nebraska
Office of the Clerk

Minutes: January 7, 2025

Page:

1

A-23-000634

State v. Oscar A Figueroa

ROD Submitted to Court without Oral Argument
Affirmed. Moore, Judge. See memorandum web opinion.

A-24-000060

Adams v. Fuller

Motion of Appellee for Attorney Fees

Appellee's motion for attorney fees sustained in part. Appellant is ordered to pay \$4,000 towards Appellee's attorney fees incurred on appeal.

A-24-000064

State v. Evan J Mielak

ROD Submission to Court
Affirmed. Arterburn, Judge. (P)

A-24-000142

State obo Asher H. v. Nathan H.

Case Review re Rule 2-111 Submission

By order of the Court, matter submitted without oral argument pursuant to Neb. Ct. R. App. P. § 2-111(B)(1). Accordingly, matter removed from the January Review Docket Call of the Nebraska Court of Appeals.

A-24-000161

State v. Kiwan C Dampeer

ROD Submitted to Court without Oral Argument
Affirmed. Riedmann, Chief Judge. See memorandum web opinion.

A-24-000202

State v. Donald G Bonar

ROD Submitted to Court without Oral Argument
Affirmed. Riedmann, Chief Judge. See memorandum web opinion.

A-24-000264

State on behalf of Jaxon D. v. Tyler B.

ROD Submitted to Court without Oral Argument
Affirmed. Moore, Judge. See memorandum web opinion.

A-24-000298

Tyler v. Tyler

ROD Case Review re Rule 2-111 Submission
Affirmed. See Neb. Ct. R. App. P. § 2-107(A)(2). This appeal raises an issue related to the dissolution action for which a final order was entered in November 2022 and has been appealed and affirmed by this court. See case No. A-22-963. In addition, a motion in arrest of judgment is applicable only in criminal proceedings, not in civil proceedings. See, State v. Moore, 186 Neb. 71, 180 N.W.2d 888 (1970); Neb. Rev. Stat. § 29-2104 (Reissue 2016).

A-24-000340

Vikkisu J. v. Whittlesey

ROD Submitted to Court without Oral Argument

Court of Appeals of Nebraska
Office of the Clerk

Minutes: January 7, 2025

Page: 2

Affirmed. Riedmann, Chief Judge. See memorandum web opinion.

A-24-000341

Stansifer v. Whittlesey

ROD Submitted to Court without Oral Argument

Affirmed. Riedmann, Chief Judge. See memorandum web opinion.

A-24-000342

McCartney v. Zurcher

Petition of Appellants to Bypass COA

Petition of Appellants to bypass the Court of Appeals denied.

A-24-000604

Days v. Adams Trucking

ROD Case Review re Rule 2-111 Submission

Affirmed. See Neb. Ct. R. App. P. § 2-107(A)(2). Appellant's petition was not filed in the workers' compensation court within two years from the date of the accident, and no exception applies. See Neb. Rev. Stat. § 48-137 (Reissue 2016) (requiring petition to be filed within two years of date of accident unless payments have been made or legal disability exists).

A-24-000609

State v. Christopher M McIlheran

ROD Petition of Appellant for Further Review

Petition of Appellant for further review denied.

A-24-000696

State v. Amy Nejezchleb

Motion Appellee to Extend Brief Date

Pursuant to Neb. Ct. R. App. P. § 2-106(E)(3), Appellee's FINAL brief date extended to February 5, 2025.

A-24-000703

State v. Quovadis M Kellogg

Motion Appellee to Extend Brief Date

Motion considered; Appellee's FINAL brief date extended to 14 days after court's ruling on Appellee's motion for summary affirmance.

A-24-000739

McDonnell v. McDonnell

Replacement Brief Due

By order of the court, the Appellee's brief filed on January 6, 2025, does not comply with Neb. Ct. R. App. P. § 2-103(C)(1) regarding the cover contents including appellate court case number, and county from which case was brought; Neb. Ct. R. App. P. § 2-109 (D)(1)(f) regarding propositions of law; and Neb. Ct. R. App. P. § 2-109 (D)(1)(g) Statement of Facts regarding the annotation to the record for each and every statement of fact. This replacement order is for the limited purpose of correcting the above deficiencies. Appellee's replacement brief complying with the above-referenced rules is due on or before January 21, 2025.

Court of Appeals of Nebraska
Office of the Clerk

Minutes: January 7, 2025

Page:

3

A-24-000743

State v. Grant Clapp

Motion of Appellant to Extend Brief Date

Pursuant to Neb. Ct. R. App. P. § 2-106(E)(3), Appellant's FINAL brief date extended to February 10, 2025.

A-24-000838

State v. Marcus D Winston

Motion of Appellant for Rehearing

Appellant's untimely motion for rehearing is overruled. The rehearing motion was filed on December 19, 2024, which was not within ten days of this court's December 3, 2024, order dismissing the appeal for lack of jurisdiction. See Neb. Ct. R. App. P. § 2-113(A) (motion for rehearing and brief in support must be filed within ten days after release of opinion of court or entry of order of court disposing of appeal).

A-24-000867

Koch v. City of Sargent, NE

ROD

Misc Submission to Court re Jurisdiction

Appeal dismissed for lack of jurisdiction pursuant to Neb. Ct. R. App. P. § 2-107(A)(1). As to the cause of action not dismissed by the district court, leave was granted for Appellant to amend his pleading. As to that cause of action, the district court's order of November 6, 2024, is a conditional order and this court does not have jurisdiction. See Nichols v. Nichols, 288 Neb. 339, 847 N.W.2d 307 (2014) (when party is given time to file amended pleading, it is a conditional order; conditional orders are not final and appealable judgments). To the extent Appellant is appealing that portion of the court's order dismissing the other five causes of action, we similarly lack jurisdiction. See Neb. Rev. Stat. § 25-1315 (Reissue 2016) (final order as to fewer than all claims shall not be immediately appealable unless court expressly directs entry of final order and determines there is no just reason for delay). There is no such order in the record before this court.

A-24-000867

Koch v. City of Sargent, NE

Mot Leave for Late Payment of BOE

Case having been dismissed for lack of jurisdiction, motion of Appellant for leave to file praecipe for bill of exceptions out of time overruled as moot.

A-24-000890

Koch v. City of Sargent, Nebraska

ROD

Misc. Submission to Court - Jurisdiction

Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2-107(A)(1). The denial of a motion for continuance is not a final order as defined in Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2022), and is often addressed in an appeal from a final order entered in a case. See e.g. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020). The district court's orders indicate that the matter remains ongoing in that court.

Court of Appeals of Nebraska
Office of the Clerk

Minutes: January 7, 2025

Page:

4

A-24-000890

Koch v. City of Sargent, Nebraska

Mot Appt Leave File Praecept Late

Case having been dismissed for lack of jurisdiction, motion of Appellant for leave to file praecipe for bill of exceptions out of time overruled as moot.

A-24-000891

Koch v. City of Sargent, Nebraska

ROD Misc. Submission to Court - Jurisdiction

Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2 107(A)(1). The denial of a motion for continuance is not a final order as defined in Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2022), and is often addressed in an appeal from a final order entered in a case. See e.g. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

A-24-000891

Koch v. City of Sargent, Nebraska

Mot Appt Leave File Praecept Late

Case having been dismissed for lack of jurisdiction, motion of Appellant for leave to file praecipe for bill of exceptions out of time overruled as moot.

A-24-000892

Koch v. City of Sargent, Nebraska

ROD Misc. Submission to Court - Jurisdiction

Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2 107(A)(1). The denial of a motion for continuance is not a final order as defined in Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2022), and is often addressed in an appeal from a final order entered in a case. See e.g. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

A-24-000892

Koch v. City of Sargent, Nebraska

Mot Appt Leave File Praecept Late

Case having been dismissed for lack of jurisdiction, motion of Appellant for leave to file praecipe for bill of exceptions out of time overruled as moot.

A-24-000893

Koch v City of Sargent, Nebraska

ROD Misc. Submission to Court - Jurisdiction

Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2 107(A)(1). The filing of a motion and affidavit or a verified petition is a jurisdictional requirement before a district court may issue a writ of mandamus, and until such filing is made, the court does not have jurisdiction over an action for writ of mandamus. Burries v. Schmaderer, 30 Neb. App. 359, 968 N.W.2d 128 (2021). When a trial court lacks jurisdiction to adjudicate the merits of a claim, issue, or question, an appellate court also lacks the power to determine the merits of the claim, issue, or question presented to the lower court. Id.

Court of Appeals of Nebraska
Office of the Clerk

Minutes: January 7, 2025

Page:

5

A-24-000893

Koch v City of Sargent, Nebraska
Mot Appt Leave File Praecipe Late
Case having been dismissed for lack of jurisdiction, motion of
Appellant for leave to file praecipe for bill of exceptions out of
time overruled as moot.

A-24-000894

Koch v. City of Sargent, Nebraska
ROD Misc. Submission to Court - Jurisdiction
Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2
107(A)(1). The denial of a motion for continuance is not a final order
as defined in Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2022), and is
often addressed in an appeal from a final order entered in a case. See
e.g. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

A-24-000894

Koch v. City of Sargent, Nebraska
Mot Appt Leave File Praecipe Late
Case having been dismissed for lack of jurisdiction, motion of
Appellant for leave to file praecipe for bill of exceptions out of
time overruled as moot.

A-24-000895

Koch v. City of Sargent, Nebraska
ROD Misc. Submission to Court - Jurisdiction
Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2
107(A)(1). The denial of a motion for continuance is not a final order
as defined in Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2022), and is
often addressed in an appeal from a final order entered in a case. See
e.g. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

A-24-000895

Koch v. City of Sargent, Nebraska
Mot Appt Leave File Praecipe Late
Case having been dismissed for lack of jurisdiction, motion of
Appellant for leave to file praecipe for bill of exceptions out of
time overruled as moot.

A-24-000896

Koch v. City of Sargent, Nebraska
ROD Misc. Submission to Court - Jurisdiction
Appeal dismissed for lack of jurisdiction. See Neb. Ct. R. App. P. § 2
107(A)(1). The denial of a motion for continuance is not a final order
as defined in Neb. Rev. Stat. § 25-1902 (Cum. Supp. 2022), and is
often addressed in an appeal from a final order entered in a case. See
e.g. In re Estate of Marsh, 307 Neb. 893, 951 N.W.2d 486 (2020).

A-24-000896

Koch v. City of Sargent, Nebraska
Mot Appt Leave File Praecipe Late
Case having been dismissed for lack of jurisdiction, motion of
Appellant for leave to file praecipe for bill of exceptions out of

Court of Appeals of Nebraska
Office of the Clerk

Minutes: January 7, 2025
time overruled as moot.

Page:

6

A-24-000930

State v. Izayah I Mapp

ROD

Misc Submission to Court re Jurisdiction

Appeal dismissed for lack of jurisdiction pursuant to Neb. Ct. R. App. P. § 2-107(A)(1). Appellant's notice of appeal was filed on December 9, 2024, which was not within thirty days of the November 6, 2024, sentencing order. See Neb. Rev. Stat. § 25-1912(1) (Cum. Supp. 2024) (notice of appeal must be filed within 30 days after entry of judgment, decree, or final order).

A-24-000962

In re Interest of Johann R.

Appellant's Brief Date Re-established

Record preparation date having been re-established to be February 12, 2025, Appellant's brief date re-established to be March 14, 2025.

A-24-000962

In re Interest of Johann R.

By Order of Court re: Record Prep Date

By order of the Court, leave to request bill of exceptions out of time having been granted and said request having been filed in the trial court, record preparation date is re-established to be February 12, 2025.

A-25-000010

State v. Joel D Betancur

By order of the Court

By order of the Court, trial court directed to rule upon motion for appointment of counsel previously filed in the trial court and/or to notify the Clerk of the Supreme Court of such ruling within 14 days of this order.

Supreme Court of Nebraska
Office of the Clerk

Minutes: January 7, 2025

Page:

1

S-11-000626

State ex rel. Counsel for Discipline v. Crawford

By order of the Court re MCLE Credits

By order of the Court, Respondent is in compliance with the required one hour of MCLE credit regarding handling client funds.

S-24-000779

State v. Terry J Sellers

Motion of Appellee to Extend Brief Date

Motion considered; Appellee's FINAL brief date extended to 14 days after court's ruling on Appellee's motion for summary dismissal.