

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

PROFESSIONAL COLLECTION SERV. V. STUTHMAN

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

PROFESSIONAL COLLECTION SERVICE, INC., APPELLEE,
V.
PAUL STUTHMAN, APPELLANT.

Filed June 12, 2012. No. A-11-701.

Appeal from the District Court for Platte County, ROBERT R. STEINKE, Judge, on appeal thereto from the County Court for Platte County, CURTIS H. EVANS, Judge. Judgment of District Court affirmed.

Paul Stuthman, pro se.

William J. Troshynski, of Brouillette, Dugan, Wilbourn & Troshynski, P.C., L.L.O., for appellee.

IRWIN, MOORE, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

Paul Stuthman appeals from the decision of the district court for Platte County, Nebraska, which affirmed the judgment of the county court in favor of Professional Collection Service, Inc. (PCS), and against Stuthman. Stuthman failed to file a statement of errors with the district court and did not specifically assign errors in the instant appeal. As a result, we decline to address Stuthman's arguments and instead have reviewed the decision of the district court for plain error. Having found no plain error, we affirm the order of the district court.

BACKGROUND

This action was originally filed by PCS against Stuthman, doing business as JKLP Builders, to collect money for goods and services provided by Paulsen, Inc., PCS' assignee. PCS is a collection service and is a Nebraska corporation. On or about July 24, 2009, Paulsen

assigned an account and executed a written agreement to PCS regarding Stuthman. The principal amount due on the account assigned to PCS was \$12,532.35. The total amount due was \$16,011.22, including interest. PCS attempted to contact Stuthman, by telephone, voice message, and letter, regarding the collection of the account, but was unable to reach him. None of the mail was returned.

The charges in connection to this account arose from the delivery of concrete on July 27 and August 1, 2007. Stuthman ordered a precise mix of concrete from Paulsen that is made up of a standard mixture and was delivered from two separate locations. The cement was delivered from two locations because it was not possible to mix the amount Stuthman needed at a single location, so the order was split. Stuthman was charged a standard rate for the goods and services provided. Bills for Paulsen's goods and services become due 30 days after delivery. Stuthman accepted delivery of the product and made no complaints regarding the product at the time of delivery or during the monthly billing cycle. According to Paulsen's records, Stuthman never contacted Paulsen regarding the quality of cement delivered and made no payments on the account. Stuthman claimed that the mixture was not correct and that the delivery time caused the cement to set incorrectly.

PCS filed the present action in the county court for Platte County, Nebraska, on January 13, 2010. Stuthman was personally served on January 15, and he filed several responsive pleadings with the court on January 26. PCS filed pleadings in response on February 26, all of which were served upon Stuthman with the notice of hearing.

On March 23, 2010, the county court ruled on PCS' motions, overruled Stuthman's motion to recuse the county judge, and sustained PCS' motion to strike portions of Stuthman's answer and counterclaim. Stuthman appealed the ruling to the district court for Platte County, and it was dismissed on January 12, 2011. Trial was held in county court on April 15, and PCS was awarded judgment in the amount of \$12,532.35 plus costs. Stuthman appealed to the district court without including a statement of errors as required by Neb. Ct. R. § 6-1452(A)(7) (rev. 2011). The district court's review on appeal was limited to plain error, and finding no plain error, the district court affirmed the county court's judgment in all respects on August 5. Stuthman filed a motion for reconsideration on August 9, and this motion was overruled on August 12. Stuthman appealed to this court on August 16. Pursuant to this court's authority under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

Stuthman failed to specifically assign errors in his brief on appeal.

STANDARD OF REVIEW

Where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error. *State v. Zimmerman*, 19 Neb. App. 451, 810 N.W.2d 167 (2012).

To be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party assigning the error. *Bellino v. McGrath North*, 274 Neb. 130, 738 N.W.2d 434 (2007).

Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error. *Deterding v. Deterding*, 18 Neb. App. 922, 797 N.W.2d 33 (2011).

Plain error is error plainly evident from the record and of such a nature that to leave it uncorrected would result in damage to the integrity, reputation, or fairness of the judicial process. *Cesar C. v. Alicia L.*, 281 Neb. 979, 800 N.W.2d 249 (2011).

ANALYSIS

Nebraska court rules require a party appealing a decision to district court to file with the district court a statement of errors consisting of a separate, concise statement of each error the party contends was made by the county court. See § 6-1452(A)(7). On April 18, 2011, Stuthman filed a notice of appeal with the clerk of the Platte County Court, but failed to file a statement of errors with the district court for Platte County. The district court acknowledged the omission and reviewed the record for plain error; finding no plain error, it affirmed the judgment of the county court on August 5.

Where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error. *State v. Zimmerman, supra*. Further, to be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party assigning the error. *Bellino v. McGrath North, supra*. Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error. *Deterding v. Deterding, supra*.

We have reviewed the record for plain error. At trial, Stuthman attempted to show that the product delivered was not in conformance with his order and that therefore, he is not responsible for the debt. Having heard all of the evidence, the trial court determined the evidence was not sufficient to overcome the evidence presented by PCS that the product was delivered as ordered, Stuthman never complained about the product, and he simply refused to pay the bill for the product delivered. The county court found Stuthman owed PCS for the amount due plus the applicable interest. The district court found no plain error, and we agree.

CONCLUSION

We conclude that our review is limited to plain error. Finding none, we affirm the decision of the district court, which affirmed the decision of the county court in this matter.

AFFIRMED.