

**IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA**

**MARY ROSE NICOLAUS,**  
Plaintiff,

vs.

**GORDON and GAYLE MAGARY,**  
Defendants.

Case No. 6840

**ORDER GRANTING MOTION**

**DATE OF HEARING:** August 18, 1999.

**APPEARANCES:**

For plaintiff: Robert D. Coupland.  
For defendants: Mark Kozisek.

**SUBJECT OF HEARING:** Defendants' Motion to Vacate Judgment.

**FINDINGS:** The court finds:

1. The transcript from county court reflects the filing of a counterclaim in excess of the jurisdictional limit of the county court. NEB. REV. STAT. § 25-2804(4) requires that, in that event, the small claims court shall cause the entire matter to be transferred to the regular county court docket and set for trial. Of course, it is possible for the counterclaiming defendant to amend his or her counterclaim to an amount within the jurisdictional limit before the small claims court has an opportunity to transfer the cause to the regular docket. Such amendment would presumably obviate the need for transfer to regular docket.

2. However, in this cause, there is no record of any such amendment. There is no physical endorsement of the defendants of any amendment upon the face of the counterclaim. There is no subsequent filing of an amended counterclaim. There is nothing in the judgment entered in writing by the small claims court to show that the amendment was accomplished orally. And of course, there is no verbatim transcript of the proceedings held before the small claims court.

3. Thus, the only record available shows on its face that the small claims court lacked jurisdiction to enter judgment. As the lower court lacked jurisdiction, this court lacks jurisdiction, and the appeal must be dismissed and the small claims judgment vacated.

4. The plaintiff-appellant through counsel orally waived her appeal time and requested

immediate issuance of the mandate.

- 5. The disposition of such motion renders all other pending motions moot.

**ORDER:** The motion is granted, and:

- 1. The judgment of the small claims court entered June 8, 1999, is vacated.
- 2. The appeal is dismissed, and the cause remanded to the Small Claims Department of the County Court of Brown County, Nebraska, for further proceedings consistent herewith.

3. The mandate to the county court shall be issued by the Clerk of the District Court forthwith stating "APPEAL DISMISSED AND REMANDED FOR FURTHER PROCEEDINGS." Costs on appeal are taxed to plaintiff-appellee and shall be certified by the Clerk of the District Court in the mandate.

- 4. All other pending motions are denied as moot. The prior order setting trial de novo is vacated.

Dated: August 18, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.
- : Deliver certified copy to county court.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.
- : Issue mandate as required by order.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.
- : Note the decision on the trial docket as: 8/18/99 Signed "Order Granting Motion" entered vacating small claims judgment, dismissing appeal, and remanding for further proceedings, with mandate to issue forthwith, and costs taxed to plaintiff-appellee.  
Done on \_\_\_\_\_, 19\_\_\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

\_\_\_\_\_  
William B. Cassel  
District Judge