

IN THE DISTRICT COURT OF BROWN COUNTY, NEBRASKA

ROBERT FLETCHER,
Plaintiff-Appellant,

vs.

**BROWN COUNTY SHERIFF
DEPARTMENT,**
Defendant-Appellee.

Case No. 6880

ORDER DISMISSING APPEAL

DATE OF HEARING: April 19, 2000.

DATE OF RENDITION: April 23, 2000.

DATE OF ENTRY: Date of filing by court clerk.

APPEARANCES:

For appellant: Appellant pro se.
For appellee: David M. Streich, Brown County Attorney.

SUBJECT OF ORDER: Appeal from county court.

FINDINGS: The court finds and concludes that:

1. The appellant applied for a certificate to purchase a handgun under NEB. REV. STAT. § 69-2404 (Reissue 1996). The deputy sheriff denied the application. The appellant timely appealed to the county court. On December 22, 1999, the county court entered a written order denying any relief to the appellant. The appellant filed a notice of appeal with the county court on January 24, 2000. The appellant also deposited the district court docket fee on January 24, 2000.

2. Both the district court and a higher appellate court generally review appeals from the county court for error appearing on the record. *State v. Patterson*, 7 Neb. App. 816, 585 N.W.2d 125 (1998).

3. Notwithstanding whether the parties raise the issue of jurisdiction, an appellate court has a duty to raise and determine the issue of jurisdiction sua sponte. *Cao v. Nguyen*, 258 Neb. 1027, ___ N.W.2d ___ (2000).

4. The statutes regarding appeals were amended by the Nebraska Legislature in 1999 in an effort to provide more certainty concerning jurisdictional issues on appeal. 1999 Neb. Laws, L.B. 43.

a. The “entry” of a judgment or final order by a county court occurs when the clerk of the county court places the file stamp and date upon the judgment or final order. NEB. REV. STAT. § 25-2729(3) (Supp. 1999). For purposes of determining the time for appeal, the date stamped on the judgment or final order constitutes the date of “entry.” *Id.*

b. In order to perfect an appeal, the appealing party must file with the county court clerk a notice of appeal and deposit with the county court clerk a docket fee in the amount of the filing fee in district court. NEB. REV. STAT. § 25-2729(1) (Supp. 1999). Those two actions must both be done within thirty days after the “entry” of the judgment or final order. *Id.*

c. The date stamp on the county court decision shows the “entry” of the county court’s judgment or final order occurred on December 22, 1999. The statute required the notice of appeal to be filed and the docket fee to be deposited “within 30 days after” December 22, 1999.

5. As the Nebraska Supreme Court reiterated in *Wanha v. Long*, 255 Neb. 849, 587 N.W.2d 531 (1998) (regarding 10-day period for filing motion for new trial), the applicable statute prescribes the method for computing the 30-day period:

[T]he period of time within which an act is to be done in any action or proceeding shall be computed by excluding the day of the act, event, or default after which the designated period of time begins to run. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a day during which the offices of courts of record may be legally closed as provided in this section, in which event the period shall run until the end of the next day on which the office will be open.

NEB. REV. STAT. § 25-2221 (Reissue 1995).

6. In this case, the date of entry, December 22, 1999, is excluded. The first day counted is December 23, 1999. The thirtieth day is Friday, January 21, 2000. The last day is included unless it falls on a Saturday, Sunday, or one of the legal court holidays thereafter specified in § 25-2221. Because the thirtieth day fell on a Friday which was not a legal court holiday, that date was the last day for the timely filing of an appeal.

7. The notice of appeal was not filed nor was the docket fee deposited until Monday, January 24, 2000. The notice of appeal is dated by the appellant as signed on January 22. Thus, the transcript clearly shows that the notice of appeal was not prepared, much less filed, until after the deadline for filing of the appeal had passed.

8. When the Legislature fixes the time for taking an appeal, the courts have no power to extend the time directly or indirectly. *In re Interest of Noelle F. & Sarah F.*, 249 Neb. 628, 544 N.W.2d 509 (1996); *Friedman v. State*, 183 Neb. 9, 157 N.W.2d 855 (1968).

9. Because the appellant failed to timely file and deposit his notice of appeal and docket fee, this court does not have appellate jurisdiction in the matter and the purported appeal must be dismissed.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The appeal is dismissed.
2. Costs on appeal are taxed to the appellant.
3. Mandate to issue as provided by law.

Signed in chambers at Ainsworth, Nebraska, on April 23, 2000.
DEEMED ENTERED upon the date of filing by the court clerk.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties **and deliver a certified copy to county court.**
Done on _____, 20__ by ____.
- 9** Enter judgment on the judgment record.
Done on _____, 20__ by ____.
- : Mail postcard/notice required by § 25-1301.01 within 3 days **stating judgment entered as “Appeal Dismissed”.**
Done on _____, 20__ by ____.
- : Note the decision on the trial docket as: [date of filing] Signed “Order Dismissing Appeal” entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge

**THE FOLLOWING DOES NOT CONSTITUTE ANY PORTION OF THE ABOVE
JUDGMENT OR ORDER AND IS INCLUDED SOLELY FOR THE CONVE-
NIENCE OF THE CLERK OF THE DISTRICT COURT:**

1. Assuming that the clerk of the district court places the file stamp and date upon this order (the “entry” defined by § 25-1301) on Monday, April 24, 2000, the last day for filing notice of appeal and depositing docket fee for appeal to the Nebraska Court of Appeal would be **Wednesday, May 24, 2000**.
2. If further appeal **is** timely perfected, issuance of the mandate of this court would await the mandate of the higher appellate court.
3. If **no** further appeal is timely perfected, within 2 judicial days after expiration of time for appeal, § 25-2733(1) requires the clerk of the district court to issue the mandate and to transmit the mandate to the clerk of the county court together with a copy of the decision.
4. The clerk of the district court should be prepared to transmit the mandate on **Thursday, May 25, 2000**.
5. In anticipation, at the clerk’s earliest convenience, the clerk should prepare a draft mandate for review to assure that it is properly completed as to form. The form is provided in the form book. The space for the district court decision would be filled in as “**APPEAL DISMISSED**”.
6. The mandate should be prepared in **two** duplicate originals. Both copies would be properly dated as to date of issuance, signed by the clerk, and the district court seal affixed.
7. **One** of the duplicate originals would be filed in the district court file. It would, of course, be file-stamped and docketed.
8. The **other** would be transmitted to county court on the **same day** that it is **issued**. The clerk of the district court would physically hand carry it to the county court clerk for filing in that court. **Attached** to the county court copy should be a **copy of the above judgment or order**. That attached copy does not have to be specially certified. The judge realizes that, pursuant to the court’s instructions, the district court clerk will have already transmitted a certified copy of the judgment or order to the county court at the time of entry. But the statute (§ 25-2733(1)) specifically requires that a copy of the decision be attached to the mandate.