

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**PREMIUM FARMS, a general
partnership,**

Plaintiff,

vs.

HOLT COUNTY, NEBRASKA,

Defendant.

Case No. CI99-94

**MEMORANDUM AND
ORDER**

DATE OF HEARING: No hearing held.
DATE OF RENDITION: July 13, 2000.
DATE OF ENTRY: Date of filing by court clerk (§ 25-1301(3)).
SUBJECT OF HEARING: Plaintiff's motion to amend decree and judgment.

MEMORANDUM: The court finds and concludes that:

1. The court rendered decree on June 22, 2000, which was entered on June 26, 2000.
2. A modification and ratification of the decree within term was rendered on June 24, 2000, and entered on June 26, 2000, immediately after the entry of the first decree.
3. The plaintiff filed a motion to amend decree and judgment on June 28, 2000, within 10 days of the date of entry of the decree.
4. The defendant filed on this date its notice of appeal and made deposit of docket fee.
5. Under the law as it existed at the date of filing of the motion, a motion to amend a judgment did not stop the running of appeal time.
 - A. A motion for reconsideration does not toll the time for appeal and is considered nothing more than an invitation to the court to consider exercising its inherent power to vacate or modify its own judgment. *Kinsey v. Colfer, Lyons, Wood, Malcom & Goodwin*, 258 Neb. 832, ___ N.W.2d ___ (2000).

B. However, where the record shows the filing of a motion for new trial, but no final, appealable order by the trial court disposing of the motion, an attempted appeal in the action will be dismissed as prematurely taken. *Id.*

C. A motion to reconsider is not to be treated as a motion for new trial for purposes of being ruled upon by the trial court before an appellate court has jurisdiction. *Id.*

D. Once a notice of appeal has been filed, any pending motions to reconsider that have not been ruled upon by the trial court become moot and the trial court no longer has jurisdiction. *Id.*

E. Like a motion for reconsideration, a motion to amend the judgment was not treated under the former law as a motion for new trial. Thus, it is clear that, but for the adoption of L.B. 921, this court's jurisdiction would have ended upon the filing of the notice of appeal and deposit of docket fee.

6. However, L.B. 921 became effective at 12:01 a.m. today, prior to the filing of the notice of appeal and deposit of docket fee. 2000 Neb. Laws, L.B. 921. Section 7 of that act expressly contemplates a motion to amend a judgment filed within 10 days of the date of judgment. 2000 Neb. Laws, L.B. 921, § 7. Section 15 amends § 25-1912 to expressly provide that a timely motion to amend terminates the running of appeal time. In other words, if L.B. 921 applies to the present case, and to the motion to amend filed prior to the act's effective date but within 10 days of the date of judgment, then, as of 12:01 a.m. this morning, the running of the appeal time was terminated and the defendant's notice of appeal thereafter was ineffective.

7. Generally, where an amendment to a statute makes a procedural change, it is binding upon a tribunal on the effective date of the amendment and is applicable to pending cases. *Nissen v. Nebraska Department of Correctional Servs.*, 8 Neb. App. 865, ___ N.W.2d ___ (1999).

8. For these reasons, this court is inclined to the view that the notice of appeal is ineffective because the court has not ruled upon the motion to amend. However, this court is also mindful that, before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *Chief Indus. v. Great Northern Ins. Co.*, 259 Neb. 771, ___ N.W.2d ___ (2000). If the Court of Appeals or the Supreme Court concludes that the appellate courts lack jurisdiction because of the peculiar circumstances surrounding the timing in this case, the appeal will be promptly dismissed. Thus, the court enters only the following order.

ORDER:

IT IS THEREFORE ORDERED that:

1. The court declines to rule upon the motion to amend judgment pending determination of jurisdiction by the appellate courts.

2. The clerk of this court is ordered to include a copy of this Memorandum and Order in the transcript, or if the transcript has already been submitted, to include this Memorandum and Order in a supplemental transcript, and to transmit the same to the Clerk of the Supreme Court and Court of Appeals.

Signed at O'Neill, Nebraska, on July 13, 2000.

DEEMED ENTERED upon filing by 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.
Done on _____, 20__ by ____.
- Include a copy of this order in transcript or supplemental transcript to Court of Appeals.
Done on _____, 20__ by ____.
- Note the decision on the trial docket as: [date of filing] Signed "Memorandum and Order" entered.
Done on _____, 20__ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge