

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

**THE STATE OF NEBRASKA, ex rel.  
BRIAN MOGENSEN d/b/a PREMIUM  
FARMS,**

Plaintiff,

vs.

**COUNTY OF HOLT BOARD OF  
SUPERVISORS; MELVIN SELTING;  
ROBERT YOUNG; DALE FRENCH;  
DONNA ZIEMS; RON DEXTER; MARVIN  
SCHOLZ; DEAN FUNK; DELOIT  
TOWNSHIP, Holt County, Nebraska;  
DELOIT TOWNSHIP BOARD; DAVID  
ZIEMS; BILL KACZOR; and TOM  
MLNARIK,**

Defendants.

Case No. CI01-143

**JUDGMENT**

**DATE OF TRIAL:** March 13, 2002.

**DATE OF RENDITION:** March 13, 2002.

**DATE OF ENTRY:** Court clerk's file-stamp date, per § 25-1301(3).

**APPEARANCES:**

For plaintiff's relator: Rodney M. Confer with relator.

For defendants:

CHBS & supervisors: James G. Kube and Thomas P. Herzog, Holt County Attorney.

DT, DTB & members: No appearance.

**SUBJECT OF ORDER:** Trial to the court without a jury.

**PROCEEDINGS:** At trial, the following proceedings occurred:

Thomas P. Herzog was granted leave to come and go as desired without requesting specific permission for each instance. After the brief preliminary matters, opening statements were waived by counsel for relator and counsel for the appearing defendants (board of supervisors and individual

supervisors). The relator presented evidence. Myron Lawler and Thomas L. Schaub were sworn and testified. The court recessed for lunch. Following the lunch recess, the relator rested. The relator moved to amend the petition by supplemental written amendment. Because the same was not prepared in form in compliance with the Uniform District Court Rules promulgated by the Supreme Court, a brief recess was taken to allow the relator's counsel time to conform the proposed amendment to the rules. Following the recess, the conforming amendment to the amended petition was presented, and without any objection from the appearing defendants, leave was granted to file the amendment and it was filed instanter by the clerk in open court. The appearing defendants moved for directed verdict, construed by the court as a motion to dismiss. The respective counsel presented arguments on the motion. The court denied the motion.

The appearing defendants presented evidence. LeMoyne D. Schulz, Dean Funk, Thomas J. Mlnarik, and David W. Ziems were sworn and testified. The appearing defendants rested.

The relator presented rebuttal evidence. Myron Lawler, who was previously sworn, was recalled and testified in rebuttal. The relator rested on rebuttal.

Counsel for relator presented closing argument. The appearing defendants verbally renewed their motion for directed verdict, construed as a motion to dismiss. The respective counsel presented arguments on the motion. The court denied the motion. Counsel for the appearing defendants presented closing argument. Counsel for the relator waived rebuttal argument. The court dictated its trial docket entry with instructions to the clerk for transcription. The court verbally pronounced decision.

**FINDINGS:** The court stated extensive findings, conclusions, and analysis on the record.

**JUDGMENT:** IT IS THEREFORE ORDERED that:

1. The plaintiff's separate amendment to the amended petition is stricken because of the absence of subject matter jurisdiction in the absence of the Town of Deloit, the town board, and the individual town board members as necessary parties at trial on the relator's purported second cause of action, construed by the court as a second theory of recovery, and the absence of notice to or any opportunity for participation of such necessary parties at trial. Because said parties are not necessary parties to the theory in plaintiff's amended petition without regard to the purported amendment, judgment may be entered on the claims asserted by the amended petition as originally filed.

2. The amended petition is dismissed at relator's cost as to the Town of Deloit and the town board and its members, David Ziems, Bill Kaczor, and Tom Mlnarik.

3. The amended petition is dismissed with prejudice at relator's cost as to the County of Holt Board of Supervisors and its board members, Melvin Selting, Robert Young, Dale French, Donna Ziems, Ron Dexter, Marvin Scholz, and Dean Funk.

4. The alternative writ of mandamus directed to the said County of Holt Board of Supervisors and its board members, Melvin Selting, Robert Young, Dale French, Donna Ziems, Ron Dexter, Marvin Scholz, and Dean Funk, is dissolved.

5. As all costs reported by the clerk have been paid by the relator, no monetary judgment is entered.

6. All requests for attorneys' fees, express or implied, are denied.

7. All claims of all parties not otherwise expressly determined above are denied. This is a final judgment as to all parties.

Signed at **O'Neill**, Nebraska, on **March 13, 2002**;  
DEEMED ENTERED upon file stamp date by court clerk.  
If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
  - If not already done, immediately transcribe trial docket entry dictated in open court.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
  - Note the decision on the trial docket as: [date of filing] **Signed "Judgment" entered**.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
  - Mail postcard/notice required by § 25-1301.01 within 3 days (**Relator's amended petition dismissed at relator's cost; alternative writ of mandamus dissolved**).  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- 9** Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge