

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

**THE STATE OF NEBRASKA,**  
Plaintiff-Appellee,

vs.

**MICKEY DON DAVIS,**  
Defendant-Appellant.

Case No. CR03-8

**DIRECTIONS TO  
COUNTY COURT**

- DATE OF HEARING:** No hearing held.
- DATE OF RENDITION:** November 20, 2003.
- DATE OF ENTRY:** See court clerk’s file-stamp date per § 25-1301(3).
- APPEARANCES:** None.
- SUBJECT OF ORDER:** Directions to county court regarding hearing on objection to affidavit and application in forma pauperis.

**MEMORANDUM:**

1. The defendant appeals from the county court judgment and sentence in a criminal case. He filed a financial affidavit including an application to proceed in forma pauperis. The supplemental transcript shows an objection to the application in forma pauperis filed by the plaintiff. A second supplemental transcript shows that the county court declined to schedule a hearing thereon, asserting lack of jurisdiction.

2. The statutes and case law on this matter have redeveloped in relatively recent time. In *State v. Jones*, 264 Neb. 671, 674-75, 650 N.W.2d 798, \_\_\_ (2002), the Nebraska Supreme Court discussed the new procedures:

In *State v. Dallmann*, 260 Neb. 937, 947, 621 N.W.2d 86, 96 (2000), we addressed the timing of a jurisdictional challenge in a case in which a party wished to proceed in forma pauperis: “Section 25-2301.02 makes clear that challenges to the ability of a defendant to proceed in forma pauperis are to occur in the [trial] court and that the [trial] court is charged with the responsibility of granting or denying the motion to proceed in forma pauperis.”

We also stated:

We have uniformly held that lower courts are divested of subject matter jurisdiction over a particular case when an appeal of that case is perfected. . . . [W]e [have] held that an in forma pauperis appeal is perfected when the appellant timely filed a notice of appeal and an affidavit of poverty.

Although jurisdiction is vested in the appellate court upon timely filing of a notice of appeal and an affidavit of poverty, some duties are still required of the lower court. . . . For example, the lower court must forward to the appellate court the notice of appeal, requests for the transcript and the bill of exceptions, and the docket fee or poverty affidavit. Sections 25-2301 and 25-2308 require the lower court to act if it determines that the allegations of poverty are untrue or if it determines that the appeal is not taken in good faith.

Generally, appellants are entitled to the benefits of an in forma pauperis appeal when the affidavit of poverty and notice of appeal are filed and stand uncontradicted and unobjected to. If there is no hearing on the poverty affidavit and the appeal, or when there is a hearing and the evidence is uncontradicted, the trial court has a duty to allow the appellant to proceed in forma pauperis.

*Dallmann*, 260 Neb. at 947-48, 621 N.W.2d at 96.

3. Thus, *Jones* and *Dallman* require that, even though jurisdiction of the appeal has vested in the district court, the county court remains responsible in the first instance for certain tasks, including holding a hearing and making the initial determinations upon any timely objection to an application in forma pauperis.

4. In the exercise of its appellate jurisdiction, this court should direct the county court to promptly hold the hearing and make the initial determinations upon the objection to application in forma pauperis, and to certify by further supplemental transcript the ruling thereon.

**ORDER:** IT IS THEREFORE ORDERED that:

1. The county court is directed to promptly hold the hearing and make the initial determinations upon the objection to application in forma pauperis, and to certify by further supplemental transcript the ruling thereon.

Signed at **Ainsworth**, Nebraska, on **November 20, 2003**;  
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 \_\_\_\_\_.
- Deliver a certified copy of this order to county court.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Note the decision on the trial docket as: [date of filing] **Signed "Directions to County Court" entered.**  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Mail postcard/notice required by § 25-1301.01 within 3 days.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Enter judgment on the judgment record.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge