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were lease payments that did not confer a proprietary interest in the vehicle.

[7] Furthermore, the issues in a given case will be limited to those which are pled.[12] Rickerl's operative complaint alleged that the policy had been breached by Farmers' refusal to repair the vehicle, not that the insurance policy had been breached by a failure to pay sufficient damages. Even had Rickerl provided evidence that she had a monetary interest in the Civic, that would not have been an issue of *material* fact, because Rickerl's complaint did not place that fact at issue. Because the pleadings do not place damages in dispute, Rickerl's final assignment of error is without merit.

CONCLUSION

For the reasons discussed above, we conclude that the district court properly granted Farmers' motion for summary judgment. Accordingly, we affirm.

AFFIRMED.

GERRARD, J., participating on briefs.

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[12] *Spanish Oaks v. Hy-Vee*, 265 Neb. 133, 655 N.W.2d 390 (2003).

KATHERINE LEACH, APPELLANT, V. JOHN DAHM, WARDEN, NEBRASKA CORRECTIONAL CENTER FOR WOMEN, ET AL., APPELLEES.

763 N.W.2d 83

Filed March 27, 2009. No. S-08-461.

1. **Motions to Dismiss: Jurisdiction: Rules of the Supreme Court: Pleadings: Appeal and Error.** Aside from factual findings, which are reviewed for clear error, the granting of a motion to dismiss for lack of subject matter jurisdiction under Neb. Ct. R. Pldg. § 6-1112(b)(1) is subject to de novo review.
2. **Criminal Law: States: Prisoners.** Nebraska's Interstate Corrections Compact, Neb. Rev. Stat. § 29-3401 (Reissue 2008), provides for the transfer of prisoners from one state to another for rehabilitation and correctional purposes, and establishes the rights and duties of the states sending and receiving prisoners.
3. ____: ____: ____. Under Nebraska's Interstate Corrections Compact, Neb. Rev. Stat. § 29-3401 (Reissue 2008), Nebraska, as the receiving state, acts solely as agent for a sending state.

Appeal from the District Court for York County: ALAN G. GLESS, Judge. Affirmed.

Stacey L. Parr, of Svehla, Thomas, Rauert & Grafton, P.C., for appellant.

Jon Bruning, Attorney General, and George R. Love for appellees John Dahm and Robert Houston.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

GERRARD, J.

Katherine Leach was convicted of two counts of driving under the influence manslaughter in Palm Beach County, Florida, but is presently confined in York, Nebraska, under Nebraska's Interstate Corrections Compact (ICC).[1] Leach filed an application for habeas corpus relief in a Nebraska district court. The primary issue presented on appeal is whether the Nebraska courts have jurisdiction over this case under the ICC.

FACTS

Leach was convicted of two counts of driving under the influence manslaughter in Palm Beach County and, in July 1999, was sentenced to 22½ years' imprisonment. Currently, Leach is confined in the Nebraska Correctional Center for Women. More than 8 years after her conviction, Leach filed an "Amended Petition for Writ of Habeas Corpus" in the York County District Court, against various Nebraska state officials responsible for her incarceration (collectively the State). In the amended petition, Leach alleged that her Florida sentence was void in violation of her right not to be subjected to cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. In response, the State filed a motion to dismiss, arguing, among other things, that the court lacked subject matter jurisdiction under Nebraska's ICC. The ICC provides that "[a]ny decision of the sending State in respect of any matter over which it retains jurisdiction pursuant to this Compact shall

[1] Neb. Rev. Stat. § 29-3401 (Reissue 2008).

be conclusive upon and not reviewable within the receiving State . . . ."[2] After a hearing on the motion to dismiss, the court dismissed the petition for lack of subject matter jurisdiction. Leach appeals.

ASSIGNMENTS OF ERROR

Leach assigns, restated, that the district court erred in (1) concluding that it did not have jurisdiction over Leach and all questions relating to her incarceration and (2) dismissing her petition with prejudice.

STANDARD OF REVIEW

[1] Aside from factual findings, which are reviewed for clear error, the granting of a motion to dismiss for lack of subject matter jurisdiction under Neb. Ct. R. Pldg. § 6-1112(b)(1) is subject to de novo review.[3]

ANALYSIS

The issue presented on appeal is whether the district court erred in granting the State's motion to dismiss for lack of jurisdiction. We conclude that under the terms of the ICC, the district court correctly dismissed the action for lack of subject matter jurisdiction. In order to determine whether the district court had jurisdiction over Leach's amended petition for a writ of habeas corpus, we turn to the ICC.

[2,3] The ICC provides for the transfer of prisoners from one state to another for rehabilitation and correctional purposes, and establishes the rights and duties of the states sending and receiving prisoners.[4] Florida and Nebraska have adopted the ICC,[5] and its provisions are dispositive of the narrow question before us. Under the provisions of the ICC, an inmate confined in an institution in a receiving state is at all times "subject to

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[2] § 29-3401, art. V(a).

[3] See *Citizens Opposing Indus. Livestock v. Jefferson Cty.*, 274 Neb. 386, 740 N.W.2d 362 (2007).

[4] *Smart v. Goord*, 21 F. Supp. 2d 309 (S.D.N.Y. 1998).

[5] See, § 29-3401; Neb. Rev. Stat. § 29-3402 (Reissue 2008); Fla. Stat. Ann. §§ 941.55 to 941.57 (West 2006).

the jurisdiction of the sending State."[6] Nebraska, as the receiving state, acts solely as agent for Florida, the sending state.[7] As a result, Leach is subject to Florida jurisdiction with respect to whether her Florida sentence is unconstitutional under the Eighth Amendment.[8] Any hearings in Nebraska considering whether Leach's sentence was unconstitutional may be held only if authorized by Florida and, if so held, are governed by the laws of Florida.[9] And Leach does not allege that Florida authorized Nebraska to consider whether Leach's sentence was unconstitutional.

Leach argues that pursuant to Neb. Rev. Stat. § 29-2801 et seq. (Reissue 2008), the district court had jurisdiction over her petition for a writ of habeas corpus. Leach asserts that under § 29-2801, a petition for a writ of habeas corpus must be filed in the county in which the prisoner is confined—here, York County.[10] We conclude, however, that § 29-2801 does not conflict with the ICC. York County would be the proper *venue* for a petition for a writ of habeas corpus under *Nebraska* law,[11] but § 29-2801 does not confer jurisdiction on a Nebraska court to determine the validity of a Florida sentence.

A writ of habeas corpus is a statutory remedy available to those who are detained without having been convicted of a crime and committed for the same, those who are unlawfully deprived of their liberty, or those who are detained without any legal authority.[12] It is not disputed that Leach was convicted of a crime, so her right to habeas relief rests upon her allegation that her sentence is unlawful. But pursuant to article IV(f)

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[6] See, § 29-3401, art. IV(c); *Falkner v. Neb. Board of Parole*, 213 Neb. 474, 330 N.W.2d 141 (1983). See, also, *Brant v. Fielder*, 883 P.2d 17 (Colo. 1994); *Ellis v. DeLand*, 786 P.2d 231 (Utah 1990); *Dugger v. Jackson*, 598 So. 2d 280 (Fla. App. 1992).

[7] § 29-3401, art. IV(a). See, also, *Brant, supra* note 6; *Ellis, supra* note 6; *Meyer v. Moore*, 826 So. 2d 330 (Fla. App. 2002).

[8] See § 29-3401, art. IV(c).

[9] See § 29-3401, art. IV(f).

[10] See *Anderson v. Houston*, 274 Neb. 916, 744 N.W.2d 410 (2008).

[11] See *id.*

[12] *Glantz v. Hopkins*, 261 Neb. 495, 624 N.W.2d 9 (2001).

of the ICC, Nebraska is acting solely as agent for Florida. Accordingly, Florida retains jurisdiction over questions relating to the constitutionality of Leach's sentence. Leach must bring any claim regarding her sentence to the authorities of the State of Florida. Nebraska is bound by the terms of the ICC, and therefore, we lack jurisdiction over Leach's petition for habeas relief.

CONCLUSION

The judgment of the district court dismissing Leach's amended petition for habeas corpus is affirmed. The denial of habeas corpus relief is jurisdictional, and without prejudice to any avenue of relief Leach may pursue in Florida.

AFFIRMED.

LUCILLE KILGORE, APPELLEE AND CROSS-APPELLANT, V. NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE STATE OF NEBRASKA, APPELLANTS AND CROSS-APPELLEES, AND LEEANNA CARR AND MELVIN WASHINGTON, APPELLEES.

763 N.W.2d 77

Filed March 27, 2009. No. S-08-481.

1. **Jurisdiction: Appeal and Error.** A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.
2. ____: ____. 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.
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.
4. **Attorney Fees: Costs.** Attorney fees, where recoverable, are generally treated as an element of court costs.
5. **Judgments: Final Orders: Attorney Fees: Costs: Appeal and Error.** An award of costs in a judgment is considered a part of the judgment. As such, a judgment does not become final and appealable until the trial court has ruled upon a pending statutory request for attorney fees.
6. **Final Orders: Appeal and Error.** To be appealable, an order must satisfy the final order requirements of Neb. Rev. Stat. § 25-1902 (Reissue 2008).