Nebraska Supreme Court Online Library
www.nebraska.gov/apps-courts-epub/
11/03/2026 02:05 PM CST

CONCLUSION

The Workers' Compensation Court is a statutorily created court and has only the authority granted to it by statute. The Nebraska Workers' Compensation Act does not grant the compensation court the authority to enforce the collection of its awards. Under § 48-188, a worker must seek such enforcement through the district court. We therefore affirm the decision of the three-judge review panel of the compensation court.

AFFIRMED.

GLEN R. DAVIS, APPELLEE, V. CHOCTAW CONSTRUCTION, INC., DOING BUSINESS AS MID-AMERICA PUMP & SUPPLY, A NEBRASKA CORPORATION, APPELLANT.

789 N.W.2d 698

Filed October 22, 2010. No. S-10-005.

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, which requires the appellate court to reach a conclusion independent of the lower court's decision.
2. ____: ____. Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.
3. **Limitations of Actions: Dismissal and Nonsuit.** Neb. Rev. Stat. § 25-217 (Reissue 2008) is self-executing, so that an action is dismissed by operation of law, without any action by either the defendant or the court, as to any defendant who is named in the action and not served with process within 6 months after the complaint is filed.
4. **Limitations of Actions: Dismissal and Nonsuit: Jurisdiction.** After dismissal of an action by operation of law under Neb. Rev. Stat. § 25-217 (Reissue 2008), there is no longer an action pending and the district court has no jurisdiction to make any further orders except to formalize the dismissal. If any orders are made following the dismissal, they are a nullity.
5. **Actions: Jurisdiction.** Lack of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte.

Appeal from the District Court for Adams County: STEPHEN R. ILLINGWORTH, Judge. Reversed and remanded with directions to vacate and dismiss.

Robert M. Sullivan, of Sullivan, Shoemaker, Witt & Burns, P.C., L.L.O., for appellant.

Michael Mead, of Law Offices of Whelan, Scherr, Glen, Goding & Mead, P.C., L.L.O., for appellee.

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

STEPHAN, J.

Glen R. Davis brought this action against Choctaw Construction, Inc. (Choctaw), doing business as Mid-America Pump & Supply, alleging that his brief employment with the company was wrongfully terminated. After a bench trial and judgment in favor of Davis, Choctaw moved for a new trial and for dismissal based in part upon the fact that it had not been served with summons and a copy of the complaint within 6 months from the date the complaint was filed. The district court overruled the motions, and Choctaw appeals.

BACKGROUND

From 1994 to 2003, Davis worked in Hawaii as an applications engineer for a company that drilled water wells. In 2002, he began looking for employment in the continental United States. In September 2002, Davis sent a cover letter and a resume to Thomas Bramble, the president of Choctaw.

Bramble subsequently contacted Davis and arranged for Davis and his wife to travel to Hastings, Nebraska. Davis met with Bramble in Hastings in late 2002 and toured the facilities of Mid-America Pump & Supply. Bramble also interviewed Davis for possible employment. Davis testified that during this interview, he told Bramble that he would accept a position only if he was given a 3-year employment contract. According to Davis, he left Nebraska anticipating that he would receive a written contractual offer from Bramble.

Approximately 2 weeks later, Davis received a handwritten letter from Bramble offering Davis a job in Hastings. In addition to stating the salary and benefits of the position, the letter provided:

> Glen, we are looking for [a] person for longterm employment. But I understand that things change! We would like you to commit to [at] least 3 years here but hopeful you will stay many more!!

> Glen, I would request a contract for this. It would be [a] basic contract stating that you would continue employment for 3 years, and if you wanted to leave between hire date and 18 months, you would be required to reimburse Mid America 4000.$\frac{00}{}$, from 18 months to 36 months 2000.$\frac{00}{}$. This in my heart is not set in stone!

Davis construed this letter as a contract, moved to Nebraska, and started working at Mid-America Pump & Supply in February 2003. Choctaw paid for Davis' moving expenses. No other written agreement was entered into by the parties. On May 16, 2003, Choctaw terminated Davis' employment, citing poor job performance as the reason for termination.

On August 15, 2005, Davis filed this action in the district court for Adams County, seeking damages resulting from his termination of employment under theories of breach of contract and promissory estoppel. After two unsuccessful attempts at service initiated by his former attorney, Choctaw was served with summons and a copy of the complaint on August 16, 2006, more than 1 year after the complaint was filed. Choctaw's first appearance in the case was on September 7, when it filed a motion to dismiss for failure to state a claim upon which relief could be granted. That motion was overruled.

Following a bench trial, the district court concluded that there was no employment contract between Choctaw and Davis, but that Davis was entitled to recover on the theory of promissory estoppel. The court entered judgment for Davis in the amount of $160,657.80.

After the judgment was entered, Choctaw filed a motion for new trial. One basis of the motion was that pursuant to Neb. Rev. Stat. § 25-217 (Reissue 2008), the district court lacked jurisdiction to enter the judgment because Choctaw had not been served with a copy of the complaint within 6 months from the date the complaint was filed. This was the first time that the jurisdictional issue had been raised. At the hearing on this motion, Choctaw also made an oral motion to dismiss the action based on § 25-217. The district court overruled these motions, and Choctaw filed this timely appeal. We moved the appeal to our docket on our own motion pursuant to our

statutory authority to regulate the caseloads of the appellate courts of this state.[1]

ASSIGNMENTS OF ERROR

Choctaw assigns, restated, that the district court erred in (1) failing to dismiss for lack of jurisdiction based on § 25-217, (2) finding that all the elements of promissory estoppel were proved by Davis, (3) finding that Davis was wrongfully terminated, (4) calculating damages, and (5) failing to find that Davis was an at-will employee subject to termination at any time.

STANDARD OF REVIEW

[1] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.[2]

ANALYSIS

[2] Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.[3] Here, Choctaw contends that pursuant to § 25-217, the district court lacked jurisdiction to enter judgment in this case because Choctaw was not served with a copy of the complaint within 6 months of the date the complaint was filed.

[3,4] Section 25-217 provides: "An action is commenced on the date the complaint is filed with the court. The action shall stand dismissed without prejudice as to any defendant not served within six months from the date the complaint was filed." This court and the Nebraska Court of Appeals have repeatedly held that this statute is self-executing, so that an action is dismissed by operation of law, without any action by either the

---

[1] See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

[2] *In re Estate of Hockemeier, ante* p. 420, 786 N.W.2d 680 (2010); *Davio v. Nebraska Dept. of Health & Human Servs., ante* p. 263, 786 N.W.2d 655 (2010).

[3] *In re Estate of Hockemeier, supra* note 2; *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 772 N.W.2d 872 (2009).

defendant or the court, as to any defendant who is named in the action and not served with process within 6 months after the complaint is filed.[4] After dismissal of an action by operation of law under § 25-217, there is no longer an action pending and the district court has no jurisdiction to make any further orders except to formalize the dismissal.[5] If any orders are made following the dismissal, they are a nullity.[6]

Davis attempts to distinguish the present action from all of the prior holdings by arguing that in this case, the district court entered a final judgment prior to the time the § 25-217 issue was raised. Davis also argues that it would be inequitable to allow Choctaw to now raise the defense of § 25-217, when Choctaw fully participated in the proceedings which resulted in the judgment against it.

[5] But these arguments cannot be reconciled with the plain language of § 25-217 and the case law regarding its application. Because the statute is self-executing, the dismissal of the action automatically occurred 6 months after the filing of the complaint and no action on the part of the district court or Choctaw was required to effect the dismissal. Therefore, there was nothing legally before the court either when Choctaw entered its initial appearance or when the court conducted the trial and entered judgment. The trial proceedings are nullities, and the district court erred in not vacating the judgment and dismissing the action when the issue of subject matter jurisdiction was raised in the postjudgment motions. Lack of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte.[7]

---

[4] See, *Reid v. Evans*, 273 Neb. 714, 733 N.W.2d 186 (2007); *Dillion v. Mabbutt*, 265 Neb. 814, 660 N.W.2d 477 (2003); *Kovar v. Habrock*, 261 Neb. 337, 622 N.W.2d 688 (2001); *Vopalka v. Abraham*, 260 Neb. 737, 619 N.W.2d 594 (2000); *Cotton v. Fruge*, 8 Neb. App. 484, 596 N.W.2d 32 (1999); *McDaneld v. Fischer*, 8 Neb. App. 160, 589 N.W.2d 172 (1999).

[5] *Reid v. Evans, supra* note 4; *Dillion v. Mabbutt, supra* note 4.

[6] *Reid v. Evans, supra* note 4; *Kovar v. Habrock, supra* note 4.

[7] *In re Estate of Hockemeier, supra* note 2; *McClellan v. Board of Equal. of Douglas Cty.*, 275 Neb. 581, 748 N.W.2d 66 (2008).

CONCLUSION

Because Choctaw was not served with summons and a copy of the complaint within 6 months from the date the complaint was filed, this action was dismissed by operation of law before any issue was submitted to the district court. The judgment entered in favor of Davis was therefore null and void. We therefore reverse, and remand with directions to the district court to vacate its judgment and to enter an order that Davis' complaint stands dismissed under § 25-217.

REVERSED AND REMANDED WITH DIRECTIONS TO VACATE AND DISMISS.